

QA: N/A

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT			1. CONTRACT ID CODE	PAGE 1 OF 1
2. AMENDMENT/MODIFICATION NO. M035	3. EFFECTIVE DATE See Block 16C	4. REQUISITION/PURCHASE REQ. NO.	5. PROJECT NO. (if applicable)	
6. ISSUED BY U.S. Department of Energy Office of Civilian Radio Active Waste Management P.O. Box 364629 Las Vegas, NV 89036-8629	CODE	7. ADMINISTERED BY (if other than item 6) CODE U.S. Department of Energy Office of Civilian Radio Active Waste Management P.O. Box 364629 Las Vegas, NV 89036-8629		
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code) Bechtel SAIC Company, LLC 1180 Town Center Drive Las Vegas, NV 89144			(v)	9A. AMENDMENT OF SOLICITATION NO.
EXECUTED COPY				9B. DATED (SEE ITEM 11)
			X	10A. MODIFICATION OF CONTRACT/ORDER N DE-AC28-01RW12101
				10B. DATED (SEE ITEM 13) 11/14/00
CODE	FACILITY CODE			

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers is extended, is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required):

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

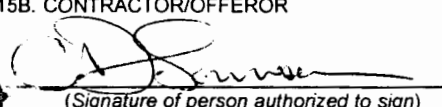
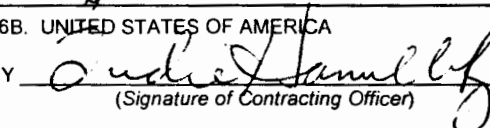
(v)	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
X	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: Bilateral - Mutual agreement of the parties
	D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor is not, X is required to sign this document and return 3 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

The purpose of this modification is to update Part I, Sections B, C, D, E, F and G and Part II, Sections H, I and J.

Except as provided herein, all terms and conditions of the document referenced in Item 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)		16. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Birdie Hamilton-Ray Contracting Officer	
15B. CONTRACTOR/OFFEROR  (Signature of person authorized to sign)	15C. DATE SIGNED 11/15/02	16B. UNITED STATES OF AMERICA BY  (Signature of Contracting Officer)	16C. DATE SIGNED 11/15/02

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FAR (48 CFR) 53.243

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PART I – THE SCHEDULE

SECTION B

SUPPLIES OR SERVICES AND PRICES/COST

PART I - THE SCHEDULE

SECTION B

SUPPLIES OR SERVICES AND PRICES/COST

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PART I - SECTION B

SUPPLIES OR SERVICES AND PRICES/COST

B.1 SERVICES BEING ACQUIRED

The Contractor shall, in accordance with the terms of this contract, provide the personnel, materials, supplies, and services (except as may be expressly set forth in this contract as furnished by the Government) and otherwise do all things necessary for, or incident to, providing its best efforts so as to carry out in an efficient and cost-effective manner all necessary related services to manage the programs and operate the facilities as described in the Statement of Work in Section C in this Contract.

B.2 OBLIGATION OF FUNDS

The total amount of funds obligated under this contract, in accordance with Section I, Contract Clause DEAR 970.5232-4, entitled, "Obligation of Funds," is \$397,378,000.

B.3 ESTIMATED COST AND FEE

a. Estimated Cost for Transition Period and Phase-in Period

- (1) The transition period (effective date of award to February 11, 2001) will be on a cost reimbursement basis and the estimated cost is \$9,579,862. There will be no fee paid for the transition period.
- (2) The phase-in period (February 12 to March 31, 2001) will be on a cost reimbursement basis and the estimated cost is \$23,154,000. There will be no fee paid for the phase-in period.

b. Estimated Contract Value

- (1) The following is the estimated contract value for the initial five year period of the contract based upon the annual appropriation and out year funding requirements identified in the Civilian Radioactive Waste Management Program Plan, Revision 3, and the Total System Life Cycle Costs.

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FY 01	\$ 174,119K
FY 02	346,923K
FY 03	564,166K
FY 04	613,166K
FY 05	1,014,266K
FY 06	<u>552,232K</u>
Total	\$3,264,872K

- (2) The following is the revised estimated contract value to date.

FY 01	\$156,714,804
FY02	\$192,099,933

c. Maximum Total Available Fee and Fee Allocation

The fee available for the performance period 04/01/01 to 04/01/06 shall be associated with Performance Based Incentives (PBI) with the following measures, amounts, adjustments, and structure.

- (1) The specific scope, measures, conditions for achieving PBI completion shall be set forth in the detailed PBI expectation sheet contained in the Performance Evaluation and Measurements Plan (PEMP).
- (2) The maximum fee available for PBIs for the performance period 04/01/01 to 04/01/06 shall be \$220,875,000.
- (3) PBIs must be achieved within the cost and funding profile set forth in paragraph B.3 (b) above unless the profile is modified pursuant to (c)(7) or (c)(9).
- (4) The maximum fee available for PBIs for the performance period 04/01/01 to 04/01/06 shall be allocated to the PBIs as set forth below:

<u>PBI</u>	<u>Completion Date</u>	<u>Fee Amount</u>
U.S. Department of Energy (DOE) Issues Site Recommendation to the President	February 2002	\$ 17,670,000
DOE Submits License Application to the Nuclear Regulatory Commission (NRC)	TBD	\$ 53,010,000
License Application passes NRC Acceptance Review	TBD	\$ 17,670,000

Receive NRC Construction Authorization

Schedule Incentive:

Target Date:	TBD	\$132,525,000
Latest Acceptable Date:	TBD	\$ 88,350,000

Should the Contractor not achieve the "Receive NRC Construction Authorization" PBI by TBD the amount of fee available will be decreased for each day delayed beyond that date at a rate calculated using straight line interpolation between the dates of TBD and TBD and their associated fee amounts set forth above. If NRC construction authorization is not received before TBD, all fee for this milestone shall be forfeited.

* The maximum Total Available Fee, as set forth in paragraph (c)(2) above, shall be allocated to the specific PBIs, as follows:

DOE Issues Site Recommendation to the President:	8%
DOE Submits License Application to the NRC:	24%
License Application passes NRC Acceptance Review:	8%
Receive NRC Construction Authorization	
Schedule Incentive:	
Target Date:	60%
Latest Acceptable Date:	40%

(5) In order for the fee associated with any one of the PBIs set forth in sub-

paragraph (3) above to be earned, all previously scheduled PBIs must be achieved, regardless of whether or not they were achieved by their scheduled completion date.

(6) Adjustments to earned PBI fee may occur subject to:

- (a) Failure to achieve functional standards to measure performance at levels consistent with nuclear industry standards, DOE orders, and contractual obligations may result in reduction to earned fee as identified in the Performance Evaluation and Measurement Plan (PEMP). These standards will be established by the Government during the transition period, and will be measured and established annually thereafter.

Anticipated standards will focus on performance areas which are of concern due to their importance to the overall performance of the contract, their potential for being problem areas, or their performance at a marginal level by the contractor.

- (b) During contract transition a PEMP will be developed. The PEMP will include the specifics of the performance fee implementation and the functional standards for the remainder of Fiscal Year (FY) 2001, and the conditions under which the fee plan is subject to modification. Adjustments for failure to achieve functional standards shall not diminish the government's rights under Section I, Contract Clause DEAR 970.5215-3, entitled, "Conditional Payment of Fee."
- (c) The Section I, Contract Clause DEAR 970.5215-3, entitled, "Conditional Payment of Fee," is applicable.

- (7) In the event the Annual Appropriations estimated in B.3 (b) above deviates for any fiscal year more than plus or minus 10% from the base set forth in (b) above, the Contractor agrees to negotiate with DOE, pursuant to the Section I, Contract Clause DEAR 970.5243-1, entitled, "Changes," an equitable adjustment to the contract, which may include the maximum total available fee amount, and PBIs, allocation of fee to PBIs, to reflect the impact of such deviation. In the event the parties are unable to reach agreement on the maximum available fee amount, the Government reserves the right to unilaterally establish the maximum available fee amount.

- (8) Fee will be provisionally paid as the specified milestones are met. A percentage of the fee pool has been designated as the fee available for each milestone. Interim payments may be made between the last milestone, Receive NRC Construction Authorization, and its predecessor, License Application passes NRC Acceptance Review. Up to fifty percent of the amount of fee available for Receive NRC Construction Authorization may be distributed quarterly, based upon a quarterly review of the Contractor's progress in meeting level 3 milestones with cost, scope and schedule and if deliverables are meeting the acceptance criteria.
- (9) Changes to the fee pool, funding levels, or milestones identified in this clause may be made with the occurrence of any of the following (a) through (c).

(a) Assumptions:

The milestone, budgets, and requirements are based upon a set of assumptions which the Office of Civilian Radioactive Waste Management (OCRWM) is currently operating under. Should the basis for those assumptions change, the milestone, budgets and/or requirements may also change. Assumptions which do not impact level 2 or higher milestones will not change the fee pool or performance based milestones. A discussion of milestone levels is contained in the Strategic System Management Policy.

(b) Funding Levels:

OCRWM has established funding levels and/or Total System Life Cycle Costs necessary to meet the program mission. Annually, budget requests are submitted to Congress to support the program. If Congress does not appropriate sufficient funds to support the program mission, DOE may change the milestone and/or requirements to stay within the appropriated funding. Any time the actual funding varies plus or minus 10 percent of the requested funding level upon which the fee pool is based, as discussed in (7) above, a change to the fee pool amount and related requirements and/or milestone may be processed through the change control system to change the baseline with a subsequent change to the PEMP.

(c) Beyond the Control/Influence:

There are certain instances when changes to program mission, milestones and/or requirements may be beyond the control/influence of either the DOE or the Contractor. Changes which may fall into this category are litigation, lawsuits, and legislation. Some examples may include expanding the repository to include more fuel than currently defined in legislation, acceptance of fuel earlier than anticipated, changing the radiation standards, etc. Additionally, decision-makers may or may not make timely decisions based on circumstances outside the control/influence of the contractor.

Examples of instances within the contractor's control or influence are quality and completeness of the documents submitted and quality, completeness and timeliness of the contractor's response to questions/concerns/issues with documents submitted.

(d) Progress Payments:

Progress payments may be made for any of the first three multi-year PBIs, as described in paragraph B.3 (c)(4) above, at the discretion of the CO. This would normally occur when there is more than 12 months between multi-year PBIs.

(e) Late Multi-year PBIs:

Fee may be reduced up to 5% for every working day the milestone slips. Up to 100% of the fee may be withheld, at the discretion of DOE, should the milestone deliverable not meet the expectations defined in the PEMP. This applies to both short-term and multi-year PBIs.

(f) Short-term PBIs:

- (i) The amount of fee for the short-term PBIs for the period 4/1/02 through 9/30/02 and for each of no more than two subsequent 6-month periods (through 9/30/03), shall not exceed \$8.5M, for each of the periods, unless such change is negotiated by the Contracting Officer.
- (ii) Of the maximum \$8.5M available, \$7.5M shall be

available to be "earned" based on selected objective level-3 milestones/activities/products. Any fee not earned due to a milestone/activity/product slippage (agreed to by DOE), the milestone/activity/product and fee shall move to a subsequent period and be in addition to the \$8.5M maximum. Should a short-term PBI be deleted, its related fee shall be redistributed to the remaining short-term PBIs in that period. Should the BSC not achieve short-term PBIs that are within their control, the fee assigned to that PBI will be lost as described in paragraph (e) above. Requests for milestone/activity/deliverable relief must be submitted to DOE no less than 45 days prior to the due date of the milestone/activity/deliverable unless extenuating circumstances preclude a timely request.

- (iii) Of the \$8.5M, \$1M shall be available for progress payment toward meeting the License Application and License Application Passes Acceptance Review milestones. Progress will be measured based on "earned value" and other criteria identified in PBI 1-2 and 1-3.
- (iv) Estimated contract value, maximum available fee, fee allocation to multi-year milestones and dates for the second and third milestones will be established after Site designation and FY 2003 appropriation.
- (v) Three months into any 6-month period, DOE may make a provisional payment up to \$3.8M. This provisional payment will be based solely on "earned value".

B.4 AVAILABILITY OF APPROPRIATED FUNDS

Except as may be specifically provided to the contrary in Section I, Contract Clause DEAR 952.250-70, entitled, "Nuclear Hazards Indemnity Agreement," the duties and obligations of the Government hereunder calling for the expenditure of appropriated funds shall be subject to the availability of funds appropriated by the Congress, which the DOE may legally spend for such purposes.

PART I – THE SCHEDULE

SECTION C

DESCRIPTION / SPECIFICATION / WORK STATEMENT

DESCRIPTION OF WORK AND SERVICES

PART I – THE SCHEDULE

SECTION C

DESCRIPTION / SPECIFICATION / WORK STATEMENT

DESCRIPTION OF WORK AND SERVICES

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Part I – The Schedule

Section C

Description / Specification / Work Statement

Description of Work and Services

Statement of Work

C1. GENERAL INFORMATION

1.0 Introduction

This requirement is for the management and operation of the Office of Civilian Radioactive Waste Management Program. A management and operating contract is defined at FAR 17.6 and DEAR 917.6.

2.0 Background

The U.S. Department of Energy (DOE) is responsible for the development of the nation's high-level nuclear waste disposal system. The Nuclear Waste Policy Act of 1982, as amended, (NWPAA) established the Office of Civilian Radioactive Waste Management (OCRWM) within the DOE and assigned it the responsibility to design, construct, and operate a system for spent nuclear fuel and high-level radioactive waste disposal, including a permanent geologic repository, and transportation.

OCRWM is headquartered in Washington, D.C. Its Director reports to the Secretary of Energy. OCRWM carries out its mission through two project-level business centers: the Yucca Mountain Site Characterization Office (YMSCO) Project in Las Vegas, Nevada, and the Waste Acceptance, Storage, and Transportation (WAST) Project in Washington, D.C. In addition, the program management and integration functions are in Washington, D.C. Certain functions are unique to one or the other of the two project level business centers. However, the recipient of this contract is to plan, manage and integrate all activities supporting both unique and non-unique functions of the business centers in the most cost effective manner possible.

The following describes the scope of work which shall be performed under this contract for the period from the effective date of award through March 31, 2011, which includes the option periods. The transition term is from the effective date of award through February 11, 2001. The Statement of Work identifies only the major deliverables / milestones and Program functions. More detailed information is available in material

referenced in the Statement of Work.

3.0 OCRWM Program Mission

The Program's mission, as set out in the NWPA, is to implement the Federal policy for permanent disposal of spent nuclear fuel and high-level radioactive waste, in order to protect the public health and the environment. The Program provides leadership in developing and implementing strategies to accomplish this mission that assure public and worker health and safety, protect the environment, merit public confidence, and are economically viable.

4.0 Site and Regional Information

The Yucca Mountain Site occupies 195 square miles in a remote area about 100 miles northwest of Las Vegas, Nevada, on the edge of the nation's Nevada Test Site. It includes a facility to store drilling samples in a controlled environment; laboratory facilities for testing samples; buildings used to administer field operations; 20 miles of paved roads and 28 miles of unpaved roads; utilities; communication systems; and approximately 800 test areas, including 451 boreholes, 276 pits and trenches, environmental plots, and geologic exposures. The underground facilities include the main loop of the Exploratory Studies Facility, which is 7.9 kilometers (5 miles) long and 7.6 meters (25 feet) in diameter, and the cross-drift (East-West drift), an excavation 2.8-kilometers (1.7-miles) long and 5 meters (16 feet) in diameter that crosses the potential repository block from east to west. The alcoves and niches constructed within the Exploratory Studies Facility, the cross drift and Busted Butte Facility contain scientific equipment used for testing and monitoring.

The preponderance of the current employees work in leased office space on Town Center Drive in the Summerlin subdivision of Las Vegas, Nevada. The Program has approximately 211,000 square feet of office space available in Las Vegas, Nevada; and 114,000 square feet of building space available on the Nevada Test Site.

Support of functions in Washington, D.C. (rapid response, technical and regulatory analyses, waste acceptance/standard contract activities, etc.) requires the Contractor to plan for limited office space in the Washington, D.C. metropolitan area. The Contractor should be cognizant of the need to minimize the space required for the Washington, D.C. area, since the functions supported are expected to remain a small fraction of the overall contract effort.

5.0 Scope of Work Summary

The YMSCO Project has been studying the Yucca Mountain, Nevada, site to determine

whether it is a suitable location to build a geologic repository for the nation's spent nuclear fuel and high-level radioactive waste. The WAST Project has been addressing issues related to acceptance, storage, and transportation of spent nuclear fuel and high-level radioactive waste for eventual emplacement in a repository.

Commercial spent nuclear fuel, DOE spent nuclear fuel, Naval spent nuclear fuel, excess plutonium and high-level radioactive waste generated primarily by defense activities will be disposed of at Yucca Mountain if the site is determined to be suitable, recommended, licensed, constructed and operated as a repository.

C2. WORK REQUIREMENTS

1.0 General Management Guidelines

DOE is responsible for all programmatic, policy and funding decisions; the establishment of goals and objectives; monitoring and measuring the performance of the Contractor; and performance of all inherently governmental functions (see FAR 7.5). DOE will be the licensee and is responsible for all programmatic interactions and interfaces with the Nuclear Regulatory Commission (NRC). Specific fiscal-year direction to the Contractor shall be provided by DOE in the annual planning guidance and the Program baseline, as referenced in the OCRWM Strategic System Management Policies 1998, and shall be incorporated into this contract on a fiscal year-by-fiscal year basis. The annual planning guidance will identify all work to be accomplished, including that to be performed by other organizations and prime contractors. DOE will conduct audits and surveillance of all aspects of the work performed under the terms of this Statement of Work to ensure compliance. DOE reserves the right to intervene, as necessary and appropriate, to redirect Program activities for the purposes of assuring DOE retains its ownership, accountability, fiduciary and licensing responsibilities.

The Program is executing the work steps identified in the Program Plan and the Viability Assessment. Specific work activities and schedules may be impacted by Congressional funding and/or legislation. The Contractor is fully accountable for the entire scope of work as described in this Statement of Work, with special emphasis on accomplishing the following Program Milestones:

- DOE issues Site Recommendation to the President..... February 2002
- DOE Submits License Application to NRC.....March 2002

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- License Application Passes NRC Acceptance Review..... June 2002
- Receive NRC Construction Authorization..... March 2005
- Update License Application to NRC April 2008
- Acquire License to Receive and Possess Waste March 2010

The Contractor shall provide the technical products and support necessary for successful milestone completion. The Contractor shall be responsible for performing the work identified by OCRWM using integrated technical plans, schedules and cost control systems, to ensure that the statement of work is accomplished. The Contractor is to determine which organizations are to perform the work. The Program issues annual guidance to the Contractor, which provides detailed information on the deliverables and finalizes the work scope for each year. It should be noted that the milestone schedule dates in the planning guidance may differ from the Project Summary Schedule dates due to planning assumptions. The Project Summary Schedule dates represent the official Program milestone dates. The content of DOE deliverables is defined in the Program guidance or for key deliverables in Program documentation, e.g., License Application Technical Guidance Document. As defined by DOE, the Contractor shall provide technical direction and ensure proper coordination of the work of the other organizations and prime contractors supporting the OCRWM Program in the accomplishment of Program milestones.

The Quality Assurance program requirements for the OCRWM Program are described in the OCRWM Quality Assurance Requirements and Description (QARD) document. The QARD contains regulatory requirements and Program commitments necessary for the development and implementation of an effective Quality Assurance program. All organizations performing work to be accepted by OCRWM, shall comply with QARD.

2.0 General Contractor Guidelines

The Contractor will be responsible for assuring that all work is done safely and in compliance with applicable requirements. The Contractor is to assure all Program deliverables comply with acceptance criteria. The Contractor shall ensure that the work as defined in this Statement of Work is executed within available funds.

The Contractor will determine the structure to best manage the requirements of the Statement of Work. The Contractor shall ensure, to the extent beneficial to the government, that subcontracting is accomplished using fixed price or performance based

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subcontracting, including the use of incentive fee and other cost risk type sharing arrangements. The Contractor shall emphasize objective and measurable performance requirements, safety and quality standards in developing statements of work; selecting subcontractors; determining subcontract type and incentives; determining subcontract costs, profit, fee, and prices; and performing subcontract administration. This subcontracting approach is meant to provide appropriate use of small and small disadvantaged businesses, increase subcontractor accountability and the privatization of work when it is in the government's best interest.

The National Laboratories and the United States Geological Survey (USGS), collectively and individually have provided nearly twenty years of scientific and engineering studies on issues relevant to the natural physical processes of the site and the engineered materials. The type of work performed to date by the National Laboratories and USGS is defined in the statement of work. It is anticipated that the National Laboratories and USGS will continue to support the Program throughout the licensing process. The Contractor is to plan, integrate and manage the work activities of the National Laboratories and USGS. For fiscal year 2001, the work scope of the National Laboratories and USGS will have been defined and approved by DOE when this Contract is executed (Reference Fiscal Year 2001 Planning Guidance, available in April 2000.) The work scope of the National Laboratories and the USGS after Fiscal Year 2001, shall be defined by the Contractor, subject to DOE approval. The identification of work to be accomplished or continued by the National Laboratories and the USGS shall be consistent with Program needs. The Contractor shall ensure that all necessary testing data is appropriately incorporated into project documents for development of the technical bases and the successful completion of scheduled milestones.

The Contractor shall, when directed and authorized by DOE, enter into subcontracts for the performance of any part of the work under this Statement of Work. Such subcontracts are distinguished from the purchase of supplies/services in support of the prime contractor's performance of the requirements set forth in the statement of work (see Section I, Contract Clause DEAR 970.5244-22, entitled, "Contractor Purchasing System.")

3.0 Interaction with Other Organizations and Prime Contractors

The OCRWM has interaction with and participation by numerous other organizations and prime contractors. The Contractor shall identify and integrate the work of the other

organizations and prime contractors supporting the OCRWM Program in the accomplishment of Program milestones. The Contractor shall be required to integrate the Waste Acceptance and National Transportation functions if these functions are provided by other prime contractors.

The Nevada Operations Office, including the Nevada Test Site (NTS), currently provides infrastructure, security and logistical support and is the landlord of the site. The Contractor shall ensure that interfaces with the NTS are maintained, work is coordinated effectively, and appropriate site support services continue. This is especially important to those activities associated with public and worker health and safety and protection of the environment.

In support of site investigation, operations and construction at the Yucca Mountain Site, Nevada Operations Office provides, through its management and operating contractor, NTS common site support such as: logistics, fire protection, emergency medical services, roads/grounds maintenance, environmental operations, vehicle/construction equipment maintenance, facility maintenance, worker transportation, janitorial and refuse services, and power (see Section C2.20.0 Support Functions). Nevada Operations Office provides Nevada Test Site security through its security protective force contract. All of the Nevada Operations Office services may be contracted for separately based upon make or buy analysis, the best overall interest of the government, and DOE approval.

The current work scope summaries of other Program participants and interaction with the Program follows. These summaries indicate Program functional category support, i.e., site investigation, design, engineering, operations and construction, and program management. In addition, any Process Model Report support is noted. The National Laboratories and the United States Geological Survey, identified in the following paragraphs, have supported the development of the scientific basis for repository performance assessment.

Program Participants:

Argonne National Laboratory

In support of design, engineering and the Waste Form Process Model Report, Argonne National Laboratory conducts unsaturated waste form testing. The laboratory is also the custodian for new spent fuel and approved test material.

Lawrence Berkeley National Laboratory

In support of site investigations, the Unsaturated Zone, and Near-Field Environment Process Model Reports, Lawrence Berkeley National Laboratory conducts unsaturated flow and transport modeling, thermal hydrologic modeling activities, geophysics testing, and supports the drift-scale heater test. The laboratory performs in situ hydrological testing and monitoring in the Exploratory Studies Facility and in the East-West Drift.

Lawrence Livermore National Laboratory

In support of site investigation, design, engineering, the Engineered Barrier Systems, Waste Form, Waste Package, and Near Field Environment Process Model Reports, Lawrence Livermore National Laboratory conducts experiments and modeling activities used to predict responses of the engineered and natural barrier systems to the heat generated by radioactive waste and conducts experiments and modeling of the waste package environment, waste package materials and waste forms.

Los Alamos National Laboratory

In support of site investigation, the Unsaturated Zone, Saturated Zone and Tectonics Process Model Reports, Los Alamos National Laboratory conducts geochemistry, mineralogy, volcanism, and colloid transport studies; laboratory and field-scale transport tests, including the Busted Butte Transport Test; and develops radionuclide transport models for the unsaturated and saturated zone groundwater at the site. Los Alamos National Laboratory collaborates with USGS on isotopic and groundwater chemistry.

Oak Ridge National Laboratory

In support of design, engineering and the Waste Form Process Model Report, the Oak Ridge National Laboratory provides analysis of commercial reactor criticality data, radiochemical assays and un-canistered fuel design. The laboratory also provides technical support for the disposal criticality topical report, thermal/neutronics model and criticality analysis process report.

Pacific Northwest National Laboratory

In support of design, engineering and the Waste Form Process Model Report, the Pacific Northwest National Laboratory provides saturated waste form testing support.

Sandia National Laboratories

In support of site investigation, the Integrated Site Model, the Near-Field Environment, Unsaturated Zone Flow and Transport, Saturated Flow and Transport, Disruptive Events, and Biosphere Process Model reports, Sandia National Laboratories performs modeling activities and also conducts in-situ monitoring in the Exploratory Studies Facility and in the East-West cross drift and also conducts experiments related to coupled processes and to performance confirmation testing. The Laboratories support design and engineering in development of the Waste Form and Engineered Barrier Systems Process Model reports and performs geoengineering and rock mechanics studies and backfill analyses. Sandia National Laboratories supports each Process Model Report in the area of model abstraction for performance assessment and develops and implements Total-System Performance analyses.

United States Geological Survey

In support of site investigation, the Integrated Site Model, Unsaturated Zone, Saturated Zone, and Tectonics Process Model Reports, the USGS conducts studies of stratigraphy, structural geology, earthquake hazards, unsaturated and saturated zone hydrology, surface processes, paleo-climatology, and modeling of unsaturated and saturated zone flow and transport.

Interactions with the Program:

Nye County

Nye County conducts hydrologic testing of the saturated zone, down gradient of the potential repository. Nye County drills, tests, and monitors a series of wells to determine aquifer characteristics, water chemistries, and flow paths. This information supports site investigations.

University and Community College System of Nevada

The University and Community College System of Nevada conducts independent scientific and engineering studies concerning Yucca Mountain as a potential repository. The studies have been far ranging from seismology and geology to data management. These studies are funded by DOE through a cooperative agreement and are only conducted after a merit review and approval by DOE. This information supports site investigation and design and engineering.

4.0 Program Integration Functions

The Contractor shall implement a fully integrated management system in compliance with OCRWM requirements and shall implement quality, timely, and cost-effective programs and operations. The Contractor shall ensure all work under its direction is conducted in a manner that complies with applicable health, safety and environmental regulations; promotes and improves productivity and efficiency; and complies with regulatory requirements, agreements and guidance. The Contractor shall maintain the project decision schedule and budgeting system, including the Integrated Budget Database. The Contractor shall support Program planning activities including assistance with revisions to the Civilian Radioactive Waste Management Program Plan and with Program planning sessions.

The Contractor shall manage work using integrated technical management systems in accordance with the Major System Management Policy (MSMP). The MSMP is a policy document, which defines how the CRWM Program is managed. The Contractor's integrated management system is to integrate the technical management (e.g., technical responsibilities and requirements, control and integration of the design process, and physical assets management); planning and control (e.g., establish cost and schedule baselines, identify roles and responsibilities, preparation of accurate cost estimates, establish work authorization process, and provide timely and traceable performance reports); and baseline management (e.g., establish a formal baseline change control process, and establish a formal configuration management system). The baseline shall describe activities over multiple years. The Contractor may propose the performance objectives to DOE on a fiscal-year by fiscal-year basis; subcontractors, as appropriate, to achieve these objectives; and an effective performance measurement system that includes incentives and productivity goals to monitor performance and to ensure that work is properly prioritized and accomplished in a cost effective, safe, secure, and

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environmentally sound manner. The Contractor shall analyze and report on Program progress against the baseline. The Contractor shall maintain baseline control documents, such as, a work breakdown index, cost and schedule baselines, and monthly management reports on Program status.

The Contractor shall accept the OCRWM baseline documentation and the Configuration Management Information System at the expiration of the incumbent's contract and maintain both in accordance with the formal change control systems. The Contractor's transition plan shall address the review of the baseline documentation for continued implementation and enhancement.

The Contractor shall maintain a post closure safety case sufficient to provide an adequate basis for assessing the safety of the repository system and explaining the performance roles of the natural and engineered systems. The Contractor shall be capable of accommodating new information by periodically performing a Total System Performance Assessment (TSPA) and incorporating the most up to date information each time TSPA is run. The post closure safety case must address the ability of the repository system to protect the health and safety of the public. The Repository Safety Strategy is the plan for completing the work associated with the post closure safety case. This strategy focuses on demonstrating how multiple natural and engineered barriers would work together to enhance post closure performance. As information about the site has increased, design has evolved, and performance assessments have become increasingly more sophisticated and the basis for the post closure safety case has improved. Accordingly, the strategy has evolved as the understanding of what is important to performance has improved. The Contractor must be capable of accommodating new information and changing Program constraints.

The Contractor shall coordinate and integrate the design functions to ensure compliance with regulatory requirements for protecting the public, workers, and the environment; to demonstrate that designs will operate cost-effectively and efficiently; to ensure that changes to designs and specifications are documented and controlled in accordance with OCRWM quality assurance requirements; and to verify that designs for facilities and equipment meet acceptance criteria and design requirements.

The Contractor shall maintain a Total System Life Cycle Cost estimate to be used in preparing an annual draft Fee Adequacy Report in accordance with the NWPA and use value engineering techniques to maintain lowest life cycle costs consistent with required

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levels of performance. The Contractor shall process and verify utility fee payment data and develop quarterly revenue projections.

In performing work under this contract, the Contractor shall comply with the applicable Federal, State and local laws and regulations (including DOE regulations), unless relief has been granted in writing from the appropriate regulatory agency. The Contractor shall comply with the requirements of DOE directives, or parts thereof, identified in the List of Applicable Directives (Section J Appendix E), appended to the contract, or a tailored set of requirements developed under a DOE approved process. The Contractor shall continuously evaluate work activities and associated hazards to assure Environmental Safety and Health standards, practices and controls are appropriate. The Contractor is responsible for assuring compliance with the requirements made applicable to the contract regardless of the performer of the work.

The Contractor shall maintain a fully integrated surveillance tracking, trending (excluding Program deficiencies trended by OCRWM, C2.8.0 Quality Assurance Functions) and reporting system to ensure site compliance with applicable health, safety, and environmental regulations; applicable DOE Orders and Standards; and quality assurance requirements. This includes the reporting and documenting of unplanned occurrences such as spills, fires, damage to operating systems, personnel accidents, and exposure to hazardous material; subsequent critiques; disposition of unplanned occurrences; and tracking of corrective actions. The Contractor shall develop and implement a formal lessons learned program.

The Contractor shall ensure that all personnel, facilities, equipment, material, supplies, and services, except as may be expressly set forth in this contract or as furnished by the Government, are available to satisfy the terms of this contract. Further, the Contractor shall take all actions necessary for, or incident to, providing all necessary and related services to manage and subcontract for the programs and operations of the facilities as described in this Statement of Work. All supplies and services are to be procured in accordance with applicable rules, regulations and policies.

The Contractor shall be required to integrate the Waste Acceptance and National Transportation functions described in C2.18.0 and C2.19.0.

The decisions to recommend and approve the Yucca Mountain will entail significant policy decisions based on technical information about not only the site but also other

components of a waste management system, including transportation, predisposal storage, finance, and system management. These policy decisions will involve the Secretary and other DOE programs, including Environmental Management, Defense Programs, Environmental Safety and Health, and the Office of Nuclear Nonproliferation; other federal agencies, particularly the Environmental Protection Agency, the Nuclear Regulatory Commission, the President's Council on Environmental Quality, and the Department of Interior; the President and the White House staff, including the Cabinet Council; the Congress; the State of Nevada and other states that may wish to comment; the nuclear utility industry; the nonproliferation and national security communities; the scientific community both within the U.S. and other nations also grappling with the nuclear waste problem; international organizations, such as the Nuclear Energy Agency and the International Atomic Energy Agency; and other stakeholders.

The Contractor will support DOE, both in Washington and Las Vegas, to shepherd the site recommendation through the policy process, including extensive communications with the many participants in the process, the analysis of policy issues, and other support activities. The integration of these support activities with the technical program is vitally important. Similarly, the licensing process, though obviously focused on the Nuclear Regulatory Commission, also will involve many other parties, some supportive and others opposed, and will require significant contractor support that is integrated with the technical program.

5.0 Site Recommendation

The YMSCO has focused its activities on site characterization, principally to develop subsurface testing facilities, and to complete the necessary technical and scientific work at Yucca Mountain. In 2001, site investigations will culminate in a series of statutory decisions on whether a repository should be developed at Yucca Mountain. If the site is determined to be suitable, in accordance with applicable laws and regulations, and the Secretary of Energy recommends the site for repository development, a Site Recommendation Report will be submitted to the President in 2001. If the President, and then Congress, approve the Site Recommendation, a License Application will be prepared and submitted to the NRC in 2002.

In 2000, OCRWM plans to issue the Site Recommendation Consideration Report to support public hearings. It will present, in summary form, the essential data, analyses, and safety arguments that could support a site recommendation; the general background

information and descriptions of the site characterization, repository design, waste form and waste package design; a discussion of the data related to pre-closure and post-closure safety of the site; and an evaluation of whether the repository system complies with DOE's site suitability guidelines.

Supporting documents for the Site Recommendation Consideration Report will include engineering design documents, the Repository Safety Strategy, the Process Model Reports, and the Total System Performance Assessment. The Contractor shall provide the necessary post-release support for the Site Recommendation Consideration Report. This support shall include but not necessarily be limited to support public hearings; disposition of the preliminary comments from the NRC concerning the extent to which the site characterization analysis and the waste form proposal seem sufficient for licensing; review comments from the public, States, Indian Tribes, NWTRB and NRC; prepare a summary of oral and written comments from the hearings, and a draft response to them; prepare a summary of comments from States and a draft response to them; prepare the draft basis for a Site Recommendation Report, which will include the results of the latest iteration of Total System Performance Assessment conducted for the evaluation of the site and the information from the Site Recommendation Consideration Report revised based on comments from the public, States, Indian Tribes, NWTRB and the NRC, as appropriate; and, ensure the report's internal consistency and manage and support the report's review and release.

6.0 License Application

The NWPA requires the Secretary to submit a license application for a high-level nuclear waste repository, in accordance with applicable laws and regulations, within 90 days of the date on which a site designation takes effect. If the site is recommended and approved, the date scheduled for license application submittal is March 2002. It is presumed that the process will encounter delays. To allow adequate time for final review, the draft application must be virtually complete by November 2001. Thus, while work related to site recommendation will have the greatest visibility in 2001, the scope, complexity and duration of repository licensing will require a significant amount of work related to licensing and interaction with the NRC throughout this same period. As the license applicant, DOE will be responsible for interactions with the NRC with Contractor support. This support will include maintaining an overall repository post-closure and pre-closure safety strategy, maintaining technical sufficiency arguments for the representation of natural and engineered barriers, drafting the necessary submittals for the License

Application and amendments, and assisting DOE in the presentation of technical issues leading up to and during the licensing hearing process.

The Contractor shall be responsible for the preparation of the license application in accordance with the License Application Management Plan and Technical Guidance Document. The specific work activities are identified in the annual planning guidance. The Contractor shall support DOE in defining the necessary information for the license amendments.

7.0 Construction / Receive and Possess Authorizations

The pre-emplacement construction will start after NRC issues a construction authorization to DOE for all or part of the repository. The Contractor shall develop the license application amendments to be submitted to the NRC for the construction authorization and receive and possess authorization. This amendment shall address the safety, common defense and security and environmental aspects of Yucca Mountain, as required by the NRC. Current plans indicate that the construction authorization may be granted as early as 2005. The construction activities will include, but not be limited to, site preparation activities, construction of surface facilities, construction of a pre-emplacement lag-storage facility, transition of existing underground drifts to repository facilities, excavation of subsurface facilities, and demonstration of select repository operations. Detailed design and operational information is available in the Subsurface Construction and Development Analysis, Subsurface Development Design, and Surface Nuclear Facility Space Program analysis.

Construction of the underground facilities will continue during the waste handling and emplacement operations phase. It is anticipated that the underground facilities will be completed sufficiently to support waste package emplacement by 2010. The Contractor shall develop the license application amendment to be submitted to the NRC to receive and possess source, special nuclear, or byproduct material at Yucca Mountain. The emplacement rate information is defined in the Acceptance Priority Ranking and Annual Capacity Report (Reference DOE/RW-0457).

8.0 Quality Assurance Functions

The NWPA mandates that the OCRWM Program complies with NRC regulations. These regulations include quality assurance requirements. Therefore, a comprehensive and effective

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Quality Assurance program is essential for the performance of work for all phases of the OCRWM Program. The NRC has prescribed quality assurance requirements and guidance for all aspects of the Program. OCRWM responsibilities, as the license applicant and owner, are to ensure that all of the quality assurance controls are in place for verification by NRC and to ensure that the systems, structures, and components under postulated conditions will not adversely affect the waste isolation capabilities of the site and cause undue risk to health and safety of the workers and the public.

The Quality Assurance functions to be performed by the Contractor include Quality Engineering, Quality Verification, and Quality Control functions for work performed under this contract by the Contractor, National Laboratories, Subcontractors and U. S. Geological Survey. Quality Engineering includes, but is not limited to: review of Contractor quality assurance procedures; review of Contractor procurement documents; in-process review of Contractor technical and design documents; providing advice to Contractor line organizations regarding quality assurance matters, especially in implementing a graded Quality Assurance program to ensure the Contractor's technical products are generated in full compliance with QARD requirements. Quality Verification includes, but is not limited to: self-assessments of Contractor processes; independent Quality Assurance program audits and surveillances of Contractor quality affecting activities; maintenance of the OCRWM Qualified Suppliers List (including quality assurance audits and surveillances of Bechtel SAIC suppliers of items and services); review, approval, and processing of Contractor generated deficiency and nonconformance reports; coordinate trending of Contractor and Bechtel SAIC supplier Quality Assurance program deficiencies (Non-Conformance Reports, Deficiency Reports and Corrective Action Reports) with OCRWM, Office of Quality Assurance. Quality Control includes, but is not limited to: independent inspection of in-process and installed facility items, receipt inspection of procured items, and nondestructive examination. The Contractor shall maintain on-site quality assurance representation at various off-site locations to provide Quality Engineering support as appropriate. Contractor shall have stop work authority over Contractor's activities to assure that work does not proceed in areas found to be significantly deficient in implementing quality assurance requirements.

OCRWM, Office of Quality Assurance will retain the responsibility for the development and maintenance of the QARD; Quality Assurance Program Management and Policy; QARD interpretation; the conduct of independent Quality Assurance program audits and surveillance at all major participant locations (other than audits of suppliers of items and services); and trending of Quality Assurance Program deficiencies (Non-Conformance Reports, Deficiency Reports and Corrective Action Reports).

OCRWM shall have access to Contractor and subcontractor facilities for purposes of quality assurance overview activities; such as audits, surveillance and reviews. Observers from NRC,

state and local governments may participate in these oversight activities. The Contractor shall respond to all deficiencies identified.

9.0 Operations, Construction and Nevada Transportation Functions

Construction and operations activities include providing, maintaining and managing operating structures, systems and components necessary to support the repository. Construction activities include constructing and modifying underground and surface test areas; changing the configuration of the Exploratory Studies Facility to provide a fully functional underground scientific research facility; providing direct support for test setup and execution; and constructing surface and sub-surface facilities necessary to support the potential repository. Operations activities include maintaining facilities and systems constructed to gather site characterization data; maintaining facilities in the central support area at the site; providing and maintaining site utilities and communications; providing transportation for site workers; and operating all repository facilities.

The Contractor shall be responsible for setting up the program for material control and accomplishing material control and accountability functions when the fuel is received at the repository in Nevada in accordance with applicable security and safeguards requirements including 10 CFR 73 and 10 CFR 75.

While the Regional Service Contractors discussed in C2.19.0, National Transportation Functions will be responsible for delivering spent nuclear fuel and high-level waste to the receiving facility at Yucca Mountain, the Contractor shall be responsible for transportation infrastructure upgrading or establishment within the State of Nevada, as required. Rail shipments will require the construction of a rail spur from existing mainline rail or construction of an intermodal facility or rail yard and required upgrades to existing highways to accommodate heavy-haul transport of rail casks.

10.0 Technical Information Management Functions

The Contractor shall be responsible for maintenance of the integrated technical databases, application software and design documentation which hold field data, laboratory test results, engineering analyses, engineering designs, as-built information, waste inventory information, waste form characteristics, design information, performance assessment information, Licensing Support Network connectivity with appropriate data and information feeds to external parties, and comments and commitments to regulators and

information feeds to external parties, and comments and commitments to regulators and oversight groups. The data will be traceable from collection to development and use in Site Recommendation and licensing documents, in accordance with Program quality assurance requirements.

Within thirty days of the Secretary's submittal of the Site Recommendation to the President, DOE is to make documentary material in electronic form available to the NRC and others.

11.0 Performance Confirmation Functions

Tests will continue over the life of the Program, in compliance with the NRC's requirement for a Performance Confirmation program, to validate the license application repository system performance. These tests will include surface and subsurface field tests and monitoring, laboratory tests, other research, and interpretation and analyses of resulting data.

The Contractor shall be responsible for completing the development of the performance confirmation requirements as described in NRC regulations, for DOE approval. These requirements will include but are not necessarily limited to incorporating new qualified test data and making necessary changes to the Process Model Reports of the site's natural features and processes. The natural feature Process Model Reports are: 1) an Integrated Site model, 2) a Biosphere model, 3) an Unsaturated Zone model, 4) a Saturated Zone model, 5) a Near Field Environment model and 6) a Disruptive Events model. The Process Model Reports associated with the Engineered Barrier System, Waste Form, and Waste Package are addressed in later sections.

Process models draw on data, which must be traceable and meet the Program quality assurance requirements, from site investigations, lab testing, and design to simulate the physical processes that could be affected by repository performance. Total system performance assessment uses models abstracted from process models for its technical basis.

12.0 Performance Assessment Functions

The Contractor shall be responsible for conducting pre-closure integrated safety assessments and post-closure total system performance assessments to support the Site

Recommendation, the repository license application, the construction authorization amendments, if any, and the license amendment to obtain a license to receive and possess nuclear material. The total system performance assessments will provide the basis for the suitability determination and for demonstrating reasonable assurance of the protection of public health and safety. It must also reflect consideration of recommendations made by the NRC, the Nuclear Waste Technical Review Board, the Total System Performance Assessment Peer Review Panel, affected units of government, states and Indian Tribes.

13.0 Environmental, Safety and Health Functions

Protection of workers, the public and the environment are fundamental responsibilities of the Contractor and a critically important performance expectation. The Contractor's Environment, Safety and Health program shall be operated as an integral, but visible, part of how the organization conducts business in accordance with a documented Integrated Safety Management System, as described in 48 CFR 970.5223-1, as amplified by the OCRWM Integrated Safety Management Plan. The Contractor shall develop and maintain implementing procedures that translate the Integrated Safety Management Plan requirements into work procedures and processes. The Contractor shall monitor all work performance to ensure compliance with implementing documents.

At different phases varying agreements between the Department and regulatory agencies are required. A systematic approach is needed to ensure that all agreements between the Department and regulatory agencies are complied with fully and commitments are met. The Contractor shall ensure that their subcontractors meet the terms and conditions of these agreements in the performance of their subcontracts.

The Contractor shall perform all activities in compliance with applicable health, safety, and environmental laws, orders, regulations, and national consensus standards where applicable and appropriate; and governing agreements and permits executed between the Department and regulatory and oversight government organizations. A systematic approach is needed to ensure full compliance. The Contractor shall take necessary actions to preclude injuries and/or fatalities, keep worker exposures and environmental releases as low as reasonably achievable below established regulatory limits, minimize the generation of waste, and maintain or increase protection to the environment, public and worker safety and health.

At the award of this contract the OCRWM will have program procedures implementing

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the Integrated Safety Management System. The Contractor will utilize the existing programs in place. Upon review of the programs in place and throughout the length of the Contract, the Contractor will be expected to improve the Project's Integrated Safety Management System amplified by the OCRWM Integrated Safety Management Plan and its implementation. Safety and Health programs include those for industrial safety in office, field, and tunnel construction environments; industrial hygiene programs to include those for radon and silica protection; fire protection; occupational medicine; training; self and independent assessment programs; integrated safety review processes; operational and event reporting; accident investigations; emergency management; and development and use of performance indicators and lessons learned programs.

Radiological protection programs will initially be required to control radon exposures and incidental use of source materials for testing and experimentation. It is recognized that the radiological protection program has to be expanded to address work activities associated with surface facility operations and handling high level waste. Environmental protection programs include maintenance and acquisition of regulatory permits and assuring operations are maintained as required by those permits, agreements or other regulatory requirements. These include but are not limited to those under the Clean Water Act, Clean Air Act, Endangered Species Act, and State water appropriations requirements.

The Contractor shall be responsible for monitoring and data collection of the weather and other environmental conditions. These data will be used for models that support the repository design and the total system performance assessments. Monitoring results during the construction and operation phase will provide evidence of the Contractor's performance in maintaining acceptable environmental conditions.

The contractor shall be responsible for implementing the ISM QA Program to comply with the requirements described in ISM QA Program document which includes Contractor self assessments. This document will be issued as an addendum to the QARD and will be posted on the Internet upon its issuance.

The Contractor shall, as appropriate, consider Environmental Safety and Health performance in selection of its subcontractors and incorporate Environmental Safety and Health requirements into subcontracts. The Contractor shall ensure that cost reduction and efficiency efforts are fully compatible with Environmental Safety and Health performance.

14.0 Waste Forms and Waste Package Materials Testing Functions

The repository will house commercial spent nuclear fuel, DOE spent nuclear fuel, Naval spent nuclear fuel, excess plutonium and high-level radioactive waste. DOE-spent nuclear fuel presents particular complexity since there are more than 250 types. Testing of waste forms and candidate materials for waste package fabrication, under anticipated repository conditions, provides the basis for developing the Waste Form and Waste Package Process Model Reports that predict degradation of waste forms and waste packages and eventual release of radionuclides. The Contractor shall be responsible for compiling design basis waste form characteristics for all waste forms in the Program's current and projected inventory for inclusion in the Total System Performance Assessment model.

15.0 Waste Package Functions

The Contractor shall be responsible for providing the waste package design, procurement and fabrication information to be licensed by the NRC. Currently, several different designs are planned to accommodate the diverse inventory of waste forms. The waste package design requires structural, thermal, radiation shielding, criticality, and operational analyses; development of fabrication and welding verification methods; and development of cost estimates (reference Waste Package Containment Barrier Materials and Drip Shield Selection Report, Waste Package Internal Materials Selection Report, and Waste Package Neutron Absorber, Thermal Shunt, and Fill Gas Selection Report.) Fabrication verification techniques are necessary to demonstrate that the waste package will perform as expected and will help meet post-closure performance objectives (reference Waste Package Fabrication Report.)

16.0 Subsurface and Surface Facilities Design Functions

The Contractor shall be responsible for providing subsurface designs to address, but not be limited to, waste emplacement, engineered barrier system, thermal load management, excavation stability, working environment safety, waste package retrieval, and repository closure. These designs support the Engineered Barrier System Process Model Report which in turn supports the Total System Performance Assessment model. The subsurface design will be needed to support the Site Recommendation and the License Application and amendments. The Contractor shall be responsible for developing the design products

to support the development of the safety analyses, the design bases, and a general description of all underground systems. The design will include a description of the systems that are required to protect the health and safety of the workers and public and those that are required to meet post-closure repository performance objectives.

The Contractor shall be responsible for providing surface engineering designs for waste receipt, lag storage, waste transfer from shipping casks into waste packages, waste package sealing, and waste package staging for underground emplacement. Other major facility designs include a waste treatment building, transporter maintenance building, site utilities, warehouses, maintenance shops, and administrative facilities.

17.0 Building Management Functions

The Contractor shall be responsible for ensuring that the nuclear and non-nuclear buildings comply with appropriate requirements. Compliance with approved building authorization bases are required by this contract. This includes the development, use and modification, as appropriate, of safety analysis reports, operations safety requirements, technical safety requirements and hazard classification documents. A graded approach to building management shall be developed and implemented based on the hazards contained in each building to ensure cost-effective compliance without compromising worker or public safety.

The Contractor shall be responsible for ensuring that the operations of nuclear facilities comply with Limiting Conditions of Operations and Technical Specifications, occurrence reporting, and other surveillances. Occurrence reporting involves the reporting and documentation of unplanned occurrences such as spills, fires, damage to operating systems, personnel accidents, and exposure to hazardous material and includes critiques, disposition of unplanned occurrences, and tracking of corrective actions.

The Contractor shall be responsible for ensuring that those activities needed to safely operate a facility such as operations management, utilities, maintenance, nuclear safety activities (some facilities), environmental compliance, health and safety practices, technical and custodial support are provided. Facility maintenance includes preventive and corrective maintenance, ensuring that materials and equipment comply with standards and are properly calibrated. Other activities include radiological and industrial safety, lockout/tagout controls, safety systems operation, and verification of conduct of operations and maintenance.

18.0 Waste Acceptance Functions

The Contractor will support the Department's maintenance of existing Standard Contracts and data collection. The Contractor may be requested to develop plans for achieving the legal and physical transfer of spent nuclear fuel and high-level radioactive waste to the Federal Government from the owners and generators of such spent nuclear fuel and high-level radioactive waste and to assist in implementing the provisions in the Standard Contract (i.e., 10 CFR 961). If requested, this includes supporting Standard Contract settlements, contract modifications, and/or deviations; updating and publishing the Acceptance Priority Ranking and Annual Capacity Report; updating verification requirements, as required; maintaining spent nuclear fuel storage data and assumptions; updating, validating and disseminating utility supplied spent nuclear fuel discharge and storage data; supporting the development of waste acceptance criteria; and supporting the waste acceptance process.

In the event that the Department takes title to fuel at reactor sites, the Contractor may be directed to support the required materials control and accountability functions and may be responsible for designing, constructing, licensing support, and operating at-reactor storage facilities.

19.0 National Transportation Functions

DOE may decide at a later date that the Contractor may be responsible for spent nuclear fuel and high-level radioactive waste transportation services. These include the development or acquisition of the necessary hardware, the operation of the hardware, the acceptance of spent nuclear fuel at reactor sites and DOE sites, and the necessary institutional expertise to support transportation of spent nuclear fuel and high-level radioactive waste to a DOE facility or facilities. The present DOE plans are to utilize Regional Services Contractors to provide these services, through direct DOE contracts. The integration of these activities with the Program will be the responsibility of the Contractor.

Prior to the start of any shipping campaign, DOE is responsible, as described in Section 180(c) of NWPA, to provide funds and technical assistance to States and Indian Tribes for training public safety officials of appropriate units of local government and Indian tribes through whose jurisdiction the Department plans to transport spent nuclear fuel or

high-level waste. The law directs DOE to provide this assistance to States and Indian tribes to train their personnel responding to emergency situations and for safe routine transportation of the nuclear materials. As the transportation component of the system is developed, the Contractor shall be responsible for assisting the Department in the development and implementation of the technical assistance program to the States and Indian Tribes eligible for assistance.

20.0 Support Functions

The Contractor shall be responsible for ensuring that common services are provided for health, safety and environmental protection, emergency management, and real property management. Some of the key common support functions are:

- training of Contractor personnel and others as specified by DOE
- property management
- inventory control
- vehicle and grounds maintenance
- design standards
- design control procedures
- general design criteria
- planning
- work control procedures
- safety analysis reviews
- site infrastructure technical support
- energy management
- capital assets management
- procurement
- computer training
- media arts
- technical support in analyzing regulatory and legislative proposals

The Contractor shall be responsible for providing information management services, including information technology, telecommunications, records management, document production, reprographic services, and publication capabilities. All software development efforts will meet the criteria of Capability Maturity Model (CMM) Level 2 Certification or equivalent. The Contractor shall be responsible for managing, operating, and maintaining facilities and systems essential to information management system

operations excluding those used by the federal staff and contractors providing direct support to the federal staff.

The Contractor shall be responsible for managing, operating, and maintaining site facilities and systems essential to site operations and surface testing. Functions may include providing electricity, water and janitorial services; controlling materials, property and warehousing supplies; operating a motor pool; providing staging for underground activities; providing utility feeds to underground operations; calibration of scientific equipment; maintaining public information capability; coordinating tours of the site; ensuring site security; and providing access control to work areas to ensure safe operations. The Contractor shall staff and operate the Yucca Mountain Science Centers.

21.0 Management, Planning, and Control System Functions

The Contractor shall maintain a management, planning and cost control structure which utilizes work packages as the basis of the performance measurement process in accordance with the Major System Management Policy (MSMP). The structure will ensure that, 1) at the work package level, work scope, cost, and schedule will be planned, baselined, and performed; 2) budgets will be established for labor, travel, subcontracts, materials, and other direct costs at the work package level time phased per the program schedule; 3) actual performance will be assessed against the work package in terms of work accomplished and the actual cost of the work collected; 4) at the work package level, performance will be summarized into the Contract Work Breakdown Structure (CWBS) and the Work Breakdown Structure (WBS) at increasingly higher levels; 5) job numbers are established for the purpose of appropriately charging costs for the work being performed and tiered into the work package; 6) actual costs are reported at the work package level and summarized at each level of the WBS and CWBS.

The process of initiating job numbers will be defined and controlled by approved procedures to ensure that the work has been authorized and funded prior to costs being incurred. Actual and accrued costs will be collected at the job number level for the resources applied in the performance of the work, and the Contractor will ensure that these costs are linked to the accounting system as identified in Business Administration Functions.

22.0 Business Administration Functions

The Contractor will provide, in the Las Vegas, Nevada area, general management activities, which include but are not limited to, legal services, audit services, payroll processing, business systems management, human resources, budget preparations, financial management, industrial relations and procurement. The Contractor shall maintain necessary systems to ensure that accurate and timely information is available for program management. These systems shall be used to identify risks and priorities; support project requirements (e.g., records, financial and human resource management systems); assess performance against the baseline; allow the evaluation of the consequences (technical, cost, schedule) of new information, alternative activities and/or new financial scenarios; include estimating procedures, based on proven commercial techniques; propose, accumulate and report costs consistent with Generally Accepted Accounting Principles, Cost Accounting Standards, and DOE Accounting Policy; provide integrated financial, schedule, critical path analysis and activity tracking data to support baseline management; emphasize performance measurements, change control and trending data; provide the ability to both control and report direct and indirect costs; integrate data generated and provided by Bechtel Nevada, the National Laboratories, DOE, other prime contractors, the Contractor and its subcontractors; provide the information necessary to support the preparation of DOE reports pursuant to or as required by regulatory agreements; and provide DOE, via computerized files, periodic accounting entries covering all aspects of government operations as well as property acquisitions, dispositions, and monthly depreciation charges.

The Contractor must maintain, in Las Vegas area, a fully-integrated, automated accounting system that is linked to DOE's accounts through the use of reciprocal accounts and that has electronic capability to transmit monthly and year-end self-balancing trial balances to the Department's Primary Accounting System for reporting financial activities under this contract in accordance with requirements imposed by the contracting officer pursuant to the Laws, regulations and DOE directives clause of the contract. The system must have the capability to record the required financial transactions including encumbrances, to control and report costs by DOE reporting structure (appropriation, budget reporting number, activity, job, project number), and to produce auditable records.

23.0 Contract Transition Functions

Beginning on the date of contract award, the Contractor shall perform those activities, necessary to assume responsibility for the contract on February 12, 2001. The Contractor shall coordinate its activities with DOE and the incumbent Contractor so as to accomplish these activities in a manner that will provide effective management of personnel and work activities while minimizing the cost of this effort. The scope of activities that are to be performed and the available budget during this period shall be subject to DOE approval.

The Contractor shall utilize any government-furnished facilities and equipment as appropriate to minimize costs. The Contractor may, subject to agreement with the incumbent Contractor, utilize incumbent Contractor personnel on a loaned basis or arrange for early transition of employees to the Contractor as appropriate. In addition, the Contractor may utilize services of subcontractors of the incumbent Contractor with agreement from the incumbent Contractor, subcontractor and DOE.

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INSPECTION AND ACCEPTANCE

**E.1 INSPECTION OF SERVICES-COST REIMBURSEMENT (FAR 52.246-5)
(APR 1984)**

- (a) Definition. "Services," as used in this clause, includes services performed, workmanship, and material furnished or used in performing services.
- (b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.
- (c) The Government has the right to inspect and test all services called for by the contract, to the extent practicable at all places and times during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.
- (d) If any of the services performed do not conform with contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, for no additional fee. When the defects in services cannot be corrected by reperformance, the Government may (1) require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and (2) reduce any fee payable under the contract to reflect the reduced value of the services performed.
- (e) If the Contractor fails to promptly perform the services again or take the action necessary to ensure future performance in conformity with contract requirements, the Government may (1) by contract or otherwise, perform the services and reduce any fee payable by an amount that is equitable under the circumstances or (2) terminate the contract for default.

E.2 ACCEPTANCE

Acceptance for all work and effort under this contract shall be accomplished by the Contracting Officer or any other duly authorized representative.

**E.3 FAR 52.246-11 HIGHER-LEVEL CONTRACT QUALITY REQUIREMENT
(GOVERNMENT SPECIFICATION) (FEB 1999)**

The Contractor shall comply with the specification entitled, "Office of Civilian Radioactive Waste Management (RW) Quality Assurance Requirements and Description" (DOE/RW-0333P), in effect on the contract date and subsequent revisions, which is hereby incorporated into this contract.

PART I – THE SCHEDULE

SECTION F

DELIVERIES OR PERFORMANCE

PART I - THE SCHEDULE

SECTION F

DELIVERIES OR PERFORMANCE

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Part I - The Schedule

SECTION F

DELIVERIES OR PERFORMANCE

F.1 PERIOD OF PERFORMANCE

The period of performance of this Contract shall be for the period from effective date of award through March 31, 2006, unless sooner terminated in accordance with the provisions of this Contract. The period from effective date of award through February 11, 2001, shall be for the transition from the existing Contractor to the successor Contractor. The phase-in period will be from February 12, 2001 through March 31, 2001. The Contractor's responsibility for management and operation of the OCRWM Program shall start on February 12, 2001.

The option periods, covering the period from April 1, 2006 to March 31, 2011, may be for a period(s) from one to five years. The Contracting Officer will determine the duration of the option period(s) at the time of written notification to the Contractor. Options may be exercised up to a total of five years. The total period of performance shall not extend beyond March 31, 2011.

F.2 PRINCIPAL PLACE OF PERFORMANCE

The principal places of performance will be Las Vegas, Nevada area and Washington, D.C.

F.3 OPTION TO EXTEND THE TERM OF THE CONTRACT

- a. The Department of Energy may unilaterally extend the term of this performance-based management contract by written notice to the Contractor within 30 days of March 31, 2006; provided that the Department of Energy shall give the Contractor a preliminary notice of its intent to extend at least twelve (12) months before the basic term of the contract expires. The preliminary notice does not commit the Department of Energy to exercise an extension.
- b. The option(s) to extend the contract is identified in "Period of Performance" of the contract. The Department of Energy may exercise any, or all, of the options identified in the contract. The total duration of this contract, including the exercise of any option(s) under this clause, shall not exceed 120 months, not including the transition and phase-in periods.

F.4 EXERCISE OF OPTION(S)

The DOE has included an option to extend the period of performance of this contract in order to demonstrate the value it places on quality performance. The DOE has provided a mechanism for continuing a contractual relationship with a successful Contractor that performs at a level which meets or exceeds quality performance expectations as communicated to the Contractor, in writing, by the Contracting Officer or designated representative. When deciding whether to exercise the option, the Contracting Officer will consider the quality of the Contractor's performance under this contract.

F.5 STOP-WORK ORDER (FAR 52.242-15) (AUG 1989)(ALTERNATE I) (APR 1984)

- a. The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this Contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period for 90 days after a stop-work order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either:
 - (1) Cancel the stop-work order; or
 - (2) Terminate the work covered by the order as provided in the Termination Clause of the contract.
- b. If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof and in any other terms of the contract that may be affected, and the contract shall be modified, in writing, accordingly, if:
 - (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

- (2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal submitted at any time before final payment under this contract.
- c. If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- d. If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

PART I – THE SCHEDULE
SECTION G
CONTRACT ADMINISTRATION DATA

PART I - THE SCHEDULE

SECTION G

CONTRACT ADMINISTRATION DATA

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SECTION G

CONTRACT ADMINISTRATION DATA

G.1 Technical and Administrative Correspondence/Matters

To promote timely and effective administration under this Contract, the Contractor shall be subject to the following procedures:

- a. Technical and Administrative Correspondence/Matters. Technical and administrative correspondence (as used herein, excludes other correspondence described in Paragraph (b)) concerning performance of this contract shall be addressed to the Contracting Officer. The Contractor shall use the Contracting Officer as the focal point for all technical and administrative matters regarding this Contract. Administration includes the issuance of Work Authorization Directives (WADs) and modifications thereto. The Contracting Officer also has the authority to modify the estimated cost set forth in the Section B, Contract Clause, entitled, "Estimated Cost and Fee."
- b. Other Correspondence. Other correspondence, including waivers, deviations, or modifications to the requirements, terms, or conditions of this Contract, shall be addressed to the Contracting Officer at the DOE Contracting Office.
- c. DOE Contracting Office. The Contracting Officer's address is:

Contracting Officer
U.S. Department of Energy
Office of Civilian Radioactive Waste Management
Contract Management Division
P.O. Box 364629
North Las Vegas, NV 89036-8629
- d. Patents/Technical Data Correspondence. Correspondence concerning patent and technical data issues shall be addressed to the Office of Patent Counsel, U.S. Department of Energy, Oakland Operations Office, 1333 Broadway, Oakland, CA 94612.
- e. Subject Line(s). All correspondence shall contain a subject line commencing with the Contract Number, as illustrated below:

Contract No. DE-AC28-01RW12101
Modification No. M035

"SUBJECT: Contract No. DE-AC28-01RW12101 (insert subject topic after Contract Number, e.g., "Request for subcontract placement approval")."

G.2 CONTRACT ADMINISTRATION

Contract Administration Office. The address for the Contracting Officer for administration is:

Contracting Officer
U.S. Department of Energy
Office of Civilian Radioactive Waste Management
Contract Management Division
P.O. Box 364629
North Las Vegas, NV 89036-8629

PART I - THE SCHEDULE
SECTION H
SPECIAL CONTRACT REQUIREMENTS

PART I - THE SCHEDULE

SPECIAL CONTRACT REQUIREMENTS

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SECTION H

SPECIAL CONTRACT REQUIREMENTS

H.1 REPRESENTATIONS AND CERTIFICATIONS

The Representations, Certifications, and Other Statements of Offeror for this Contract as completed by the Contractor are hereby incorporated in this Contract by reference.

H.2 MODIFICATION AUTHORITY

Notwithstanding any of the other provisions of this contract, a Contracting Officer shall be the only individual on behalf of the Government to:

- a. Accept nonconforming work;
- b. Waive any requirement of this contract; or
- c. Modify any term or condition of this Contract.

H.3 SUBCONTRACT LABOR LAW APPLICATION

- a. For all subcontracts for the manufacture or furnishing of supplies subject to the Walsh-Healey Public Contracts Act (41 U.S.C. 35 et seq.), the Contractor shall follow those provisions, requirements, and stipulations required by the Act.
- b. For subcontracts relating to construction, refer to the Section I, Contract Clause DEAR 970.5236-1, entitled, "Government Facility Subcontract Approval."

H.4 SMALL BUSINESS SUBCONTRACTING PLAN

The Small Business Subcontracting Plan with goals, submitted by the Contractor consistent with the provisions of Section I, Contract Clause, FAR 52.219-9, entitled, "Small Business Subcontracting Plan" and approved by the Contracting Officer is incorporated into this Contract as Appendix C in Section J. Prior to the beginning of each Fiscal Year, the Contractor shall also submit an "annual" subcontracting plan, which shall establish subcontracting goals as described in paragraph (d)(1) and (2) of FAR 52.219-9, entitled, "Small Business Subcontracting Plan." The annual plan shall be reviewed for approval by the Contracting Officer and shall be incorporated into this Contract.

H.5 SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM TARGETS

Small Disadvantaged Business Participation Program targets submitted by the Contractor in its proposal will be incorporated into this Contract. To the extent that such concerns specifically were identified in the proposal, they are also incorporated into this Contract and the Contractor shall notify the Contracting Officer of any substitutions of firms. The Contractor's performance in meeting the targets contained in its proposal and its demonstrated commitment to maximizing the participation of Small Disadvantaged Business concerns in Contract performance may be assessed as a functional standard under this Contract, as appropriate.

H.6 GOVERNMENT-OWNED PROPERTY AND EQUIPMENT

On February 12, 2001, the Contractor shall accept the transfer of and accountability for Government-owned property and equipment from Contract No. DE-AC08-91RW00134.

H.7 APPROVAL OF EXPENDITURES

Whenever approval of an action by the Contracting Officer is required with respect to any expenditure or commitment by the Contractor under the terms of this Contract, the Government shall not be responsible for such expenditures or commitments unless and until such approval or action is obtained or taken.

H.8 INTER-CONTRACTOR PURCHASES

Through an Inter-Contractor Purchase, an integrated Contractor can perform work for another integrated Contractor. Two funding mechanisms can be utilized under the Inter-Contractor Purchase. An annual scope of work of \$250,000 or less can be funded via cash orders which are Contractor purchase orders describing the requested scope of work, the deliverables, completion date, and the funding source; integrated cash orders are written directly to an integrated Contractor. The second funding mechanism is a DOE Interoffice Work Order covering annual scopes of work exceeding \$250,000. A DOE Interoffice Work Order is a document containing similar information to the cash order and is written or approved by two DOE Offices. Funding for these efforts is provided through the DOE Office to the performing integrated DOE Contractor via their Approved Funding Program.

H.9 ASSUMPTION OF EXISTING AGREEMENTS AND SUBCONTRACTS

On February 12, 2001, the Contractor shall assume responsibility for all existing subcontracts and other agreements from Contract No. DE-AC08-91RW00134. These include: (a) all subcontracts and purchase orders, (b) cooperative research and development agreements, (c) consent orders, (d) regulatory agreements and permits, (e) collective bargaining agreements, (f) site-wide plans (e.g., safety and security plans) and (g) any other agreements in effect prior to February 12, 2001.

H.10 PRIVACY ACT SYSTEMS OF RECORDS

The Contractor shall design, develop, or operate the following systems of records on individuals to accomplish an agency function pursuant to the Section I, Contract Clause FAR 52.224-2, entitled, "Privacy Act."

<u>DOE System No.</u>	<u>Title</u>
DOE-28	General Training Records
DOE-33	Personnel Medical Records
DOE-35	Personnel Radiation Exposure Records
DOE-38	Occupational and Industrial Accident Records
DOE-42	Personnel Security Clearance Index
DOE-44	Special Access Authorization for Categories of Classified Information
DOE-51	Employee and Visitor Access Control System
DOE-52	Foreign National Visitor
DOE-53	Access Authorization for ADP Equipment

The above list shall be revised from time to time by mutual agreement between the Contractor and the Contracting Officer as may be necessary to keep it current. Such changes need not be formally incorporated before the annual contract update modification, but shall have the same effect as if actually listed above for the purpose of satisfying the listing requirement contained in Paragraph (a)(1) of the Section I, Contract Clause, FAR 52.224-2, entitled, "Privacy Act."

H.11 UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION (UCNI)

Documents originated by the Contractor or furnished by the Government to the Contractor in connection with this Contract may contain Unclassified Controlled Nuclear Information as determined pursuant to Section 148 of the Atomic Energy Act of 1954, as amended. The Contractor shall be responsible for protecting such information from unauthorized dissemination in accordance with DOE Regulations and Directives.

H.12 CONTRACTOR EMPLOYEES: EMPLOYER/EMPLOYEE RELATIONSHIP

Persons employed by the Contractor shall be and remain employees of the Contractor and shall not be deemed employees of the DOE or the Government; however, nothing herein shall require the establishment of any employer-employee relationship between the Contractor and consultants or others whose services are utilized by the Contractor for the work hereunder.

The Contractor's employees normally engaged in the performance of this contract may be retained on the allowable costs payroll and used intermittently by the Contractor on work other than in the performance of this contract provided, however, that during the period of such intermittent use, including time spent in traveling to and from the site of such work, the employee shall not be deemed to be performing work under this contract, and insurance coverage of the Contractor, the premiums or costs of which are allowable costs under this contract (including Workmen's Compensation, employer's liability and public liability insurance), shall not be applicable or used to defend against or pay any liability of the Contractor to such employees (or persons claiming through them) or to other persons. With respect to such intermittent services, the Contractor shall credit to the account of the government, as provided in Section I, Contract Clause, DEAR 970.5232-2, entitled, "Payments and Advances," or as otherwise directed by the DOE, the amounts paid to the Contractor to the employees or other persons, or contributed to any benefits plans for such employees, from Government funds, which relate to such employees' work for the Contractor not in the performance of this contract. Set amount or amounts shall be at full cost recovery and include, but not be limited to, travel, per diem, and surviving spouse payments, if any, actual salaries and wages of the persons performing such services plus a percentage factor of such salaries and wages in lieu of direct payment for payroll taxes and benefits. The aforementioned factor shall be established for each ensuing year as mutually agreed between the Contracting Officer and the Contractor.

H.13 PLANNED PROCUREMENTS

The contractor will provide to the Contracting Officer a schedule of planned procurements (including subcontracts, purchase orders, etc.) or modifications to same, over \$100K for a 24 month period. Such schedules shall be updated and submitted by each September 15 and March 15 with the first schedule due September 15, 2001. The schedule shall reflect estimated value, type of subcontract, purchase order, etc.,

description of service or product and, if applicable, a justification for other than firm fixed price, sealed bid, subcontract agreements. This schedule should not be considered a substitute for, but complement, the Make-or-Buy Plan required by DEAR 970.5215-2.

H.14 CONTRACTOR AFFILIATED SOURCES

It is recognized that the technical and staffing requirements of the Contractor will vary during the performance of this Contract. The technical and staff support capabilities of the Contractor and its affiliates were proposed and recognized in the competitive selection process. Therefore, the Contractor may obtain direct support from affiliates to meet technical and staffing requirements on an as-needed basis, subject to the requirements of DEAR 970.4402-3. The process and procedure for utilizing support from affiliates shall be approved by the Contracting Officer.

Services from an approved Contractor Affiliate will be at cost without additional fee or profit. Allowable costs will include direct costs and all allocable affiliate indirect costs in accordance with applicable federal and/or DOE principles and cost accounting standards. Temporary assignments of Contractor Affiliate personnel to the Yucca Mountain Site or other sites identified in this Contract shall bear indirect costs based upon a DCAA recommended/approved offsite rate that excludes home office facilities related costs. However, in the event a DCAA recommended/approved offsite rate does not exist for a specific Contractor Affiliate, the Contractor Affiliate, while required to develop an offsite rate, shall not be required to obtain DCAA approval of the offsite rate unless the temporary assignment exceeds 6 months.

Contractor's Affiliates providing such services and personnel shall perform the work in accordance with applicable terms and conditions of the Contract.

H.15 LOBBYING RESTRICTIONS

The Contractor or awardee agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

H.16 NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS - SENSE OF CONGRESS

It is the sense of Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

H.17 LIMITATION OF LONG TERM LIABILITY REGARDING PERSONNEL COSTS

It is DOE's goal to develop an approach to personnel costs which maintains the full value of worker's benefits packages while at the same time limiting DOE's long term liability. The Contractor agrees to submit a plan to DOE during FY 2001 for achieving this goal.

H.18 WORK AUTHORIZATION SYSTEM

- a. Prior to the start of each Fiscal Year, the DOE shall provide the Contractor program execution guidance in sufficient detail to develop an estimated cost, scope, and schedule. The Contractor shall submit to the Contracting Officer or other designated official, a detailed Scope of Work (SOW), a budget of estimated costs, and a schedule of performance for the work to be performed during the next Fiscal Year.
- b. The Contractor and DOE shall mutually establish a budget of estimated costs, detailed SOW, and schedule of performance for each milestone/deliverable at level 3 or as otherwise specified by the Contracting Officer. The established estimated costs, detailed SOW, and schedule of performance shall be incorporated into WADs, signed by the Contractor and issued by the Contracting Officer, which are incorporated by reference into this Contract. If agreement cannot be reached on the scope, schedule, and estimated cost for the WADs, the Contracting Officer shall issue unilateral WADs pursuant to this clause which shall not be subject to appeal under the Section I, Contract Clause, FAR 52.233-1, entitled "Disputes."
- c. No activities shall be authorized and no costs incurred until either the Contracting Officer has issued WADs or the Contracting Officer has issued direction concerning continuation of activities.
- d. Work Authorization Directives. The WADs authorizing the Contractor to proceed with performance shall be provided to the Contractor by the Contracting Officer. Each WAD so issued will include as a minimum the following:
 - (1) Authorization number and effective date;
 - (2) Description of work;
 - (3) Applicable paragraph reference to the SOW;
 - (4) Estimated cost (and estimated cost for the work to be performed under this authorization if the WAD performance schedule exceeds the current contract);

- (5) Appropriate performance objectives, schedule, and milestone dates;
 - (6) Cost, schedule, and all other reporting requirements;
 - (7) Date of issue;
 - (8) Contractor's signature;
 - (9) Contracting Officer's signature.
- e. Technical Direction. Government direction of the performance of all work authorized for performance under this Contract shall be in accordance with the Section I, Contract Clause, DEAR 952.242-70, entitled "Technical Direction."
- f. Modification of Work Authorization Directives. The Contracting Officer may at any time and without notice issue changes to the WADs within the SOW of the Contract requiring additional work, or directing the omission of, or changes to the work. A proposal for adjustment in the budget of estimated costs and schedule of performance of work established in accordance with paragraph (b) of this clause shall be submitted by the Contractor in accordance with paragraphs (a) and (b) of this clause. In addition, the Contractor shall notify the Contracting Officer immediately whenever the cost incurred to date plus the projected cost to complete the work on any WAD is expected to exceed or underrun the estimated cost by ten percent of the WAD. In this case, the Contractor shall submit a proposal for a change in the WAD in accordance with paragraphs (a) and (b) of this clause.
- g. Expenditure of Funds and Incurrence of Cost. The performance of work and the incurrence of cost in the execution of the SOW of this Contract shall be initiated only when authorized in accordance with the provisions of this subsection. The expenditure of monies by the Contractor in the performance of all authorized work shall be governed by the provisions of the Section I, Contract Clause, DEAR 970.5232-4, entitled "Obligation of Funds."
- h. Order of Precedence. This clause is of lesser order of precedence than the Section I, Contract Clauses, DEAR 970.5232-4, entitled, "Obligation of Funds"; and DEAR 970.5232-2, entitled, "Payments and Advances." The Contractor is not authorized to incur costs on any WAD which is not in compliance with the other terms and conditions of this Contract.
- i. In the event there is a conflict between the requirements of this subsection and Section J, Appendix E, "List of Applicable Directives," as amended, the Contractor shall obtain guidance from the Contracting Officer.

- j. Responsibility to achieve Environment, Safety, Health, and Security Compliance. Notwithstanding the other provisions of this subsection, the Contractor has, in the event of an emergency, authority to take corrective actions as may be necessary to sustain operations in a manner consistent with applicable environmental, safety, health, and security statutes, regulations, and procedures. In the event that the Contractor takes such an action, the Contractor shall notify the Contracting Officer within 24 hours after such action was initiated and, within 30 days after such action has been initiated, submit a proposal for adjustment in the estimated costs and schedule of performance of work established in accordance with paragraph (a) and (b) of this subsection.

H.19 REPORTING REQUIREMENTS

- a. Work Breakdown Structure (WBS)

The Contract WBS, an extension of the Program WBS, shall reflect all program and project work scope. The Contract WBS together with the Program WBS shall be the basis for all reports required by this subsection. The Contract WBS Index and Dictionary shall be approved by the Contracting Officer, and shall conform with all implementation guidance. It shall be submitted to the Contracting Officer by January 12, 2001.

- b. Periodic Plans and Reports

The Contractor shall submit periodic cost, schedule, and technical performance plans and reports in such form and substance as required by the Contracting Officer. These periodic plans and reports shall be submitted at the interval, and to the addresses and in the quantities as specified by the Contracting Officer. Where specific forms are required for individual plans and reports, the Contracting Officer shall provide such forms to the Contractor. The plans and reports expected to be submitted by the Contractor are described generally as follows:

General Management Reports narratively summarize schedule, labor, and cost plans and status, and provide explanations of status variances from plans.

Schedule/Labor Cost Reports provide information on schedule, labor and cost plans and status.

Performance Measurement Reports provide earned value cost and schedule performance data, both cumulative and at completion, as well as milestone status, financial status, and technical performance. Also provided in these reports are analyses of cost and schedule performance trends, and identification of actual and potential problems. Integrated technical, cost and schedule variance analyses and corrective action plans will be provided if variances exceed DOE reporting thresholds provided by the Contracting Officer. Performance will be reported to

DOE at the lowest level elements of the Program WBS unless directed differently by the Contracting Officer.

Technical Reports are the means by which scientific, technical, and engineering information acquired in the performance of the work is disseminated.

Contract Fund Status Reports provide outstanding commitments plus incurred costs in order to ensure that authorized funding limits will not be exceeded and to provide early warning if funding limits could be exceeded.

Letter Reports, if requested by DOE, provide quick response information on inquiries or sudden problems/issues.

Plans and reports shall be prepared by the Contractor in such a manner as to provide for:

- (1) consistency with the contract Statement of Work, the WADs, the approved WBS and the existing accounting structure, as appropriate.
- (2) correlation of data among the various plans and reports.

c. Changes in Work Effort

The reporting system established and maintained by the Contractor pursuant to this subsection shall recognize changes in work effort directed by the Contracting Officer, as provided for in the Work Authorization System. During performance of this contract, the Contractor shall update and/or change, as appropriate, the WBS (including any diagrams, supporting work descriptions, and WBS dictionary) to reflect changes in the Scope of Work or WADs. The Contractor's reporting system shall be able to provide for the following at the WAD level, or such lower level, as specified by the Contracting Officer:

- (1) incorporate contractual changes affecting estimated cost, schedule, and other relevant terms and conditions of the contract, in a timely manner;
- (2) reconcile estimated costs for those elements of the WBS identified in the contract as either priced line items or discrete WADs, and for those elements at the lowest level of the project summary WBS with current performance measurement budgets in terms of:
 - (a) Changes to the authorized work; and,
 - (b) Internal replanning in the detail needed by management for effective control;

- (3) prohibit retroactive changes to records pertaining to work performed that will change previously-reported costs except for correction of errors and routine accounting adjustments;
 - (4) prevent revisions to the contract estimated costs except for Government-directed or approved changes to the contractual effort; and
 - (5) document changes to the performance measurement baseline and, on a timely basis, notify the Contracting Officer of such changes.
- d. The Contractor agrees to provide the Contracting Officer, or designated authorized representatives, access to information and documents comprising the Contractor's reporting system described in (b) above.
- e. The Contractor shall include the requirements of this clause in all subcontracts that are cost-reimbursement type of contracts when:
- (1) the value of the subcontract is greater than \$2 million, unless specifically waived by the Contracting Officer, or
 - (2) the Contracting Officer determines that the contract/subcontract effort is, or involves, a critical task related to the contract.

H.20 PERSONAL AND REAL PROPERTY MANAGEMENT

The Contractor shall implement and maintain DOE-approved real and personal property systems which provide for the acquisition, accountability, segregation, physical protection, identification, financial reporting, physical inventory, required maintenance, motor equipment management, materials management, excess property reporting and utilization, and disposal of real and personal property assets.

H.21 THIRD PARTIES

Nothing contained in this Contract or its amendments shall be construed to grant, vest, or create any rights in any person not a party to this Contract. This provision is not intended to limit or impair the rights which any person may have under applicable Federal Statutes.

H.22 WORK ALLOCATION

- a. It is DOE policy to foster labor peace and encourage work allocation in such a manner that the work will be performed in an expeditious and resource-economical fashion by trained employees. Occasionally, work which does not clearly fall within the jurisdiction of any single labor or collective bargaining

agreement to which the Contractor is a party, must be performed (such work is hereinafter referred to as "Unassigned Work").

- b. The Contractor shall establish a process, consistent with applicable DOE guidance, that is reasonably calculated to allocate Unassigned Work in a manner agreeable to the affected unions and consistent with the requirements of applicable law and the terms of this Contract.
- c. Nothing in this clause shall be construed to restrict the Contractor from performing Unassigned Work in accordance with either the terms of this Contract or written direction of the Contracting Officer.

H.23 AGREEMENT REGARDING PATENT AND DATA CLAUSES

The Department of Energy anticipates the promulgation of revisions to the following clauses of this contract prior to, or shortly after, the award of this Contract. Subsequent to such promulgation, the Contractor agrees to negotiate, in good faith, the substitution of these revised clauses for the corresponding existing contract Clauses.

DEAR 970.5227-4, Authorization and Consent

DEAR 970.5227-5, Notice and Assistance Regarding Patent and Copyright Infringement

DEAR 970.5227-6, Patent Indemnity

H.24 HUMAN RESOURCES

- a. Advance Understanding on Human Resources Cost

DOE Order 350.1, Human Resources Management Program, will serve as the governing document for Contractor human resources costs. However, if warranted, the Department and the successful Offeror may reach a separate advance understanding for selected Contractor human resources costs. Advance understandings enable both the Contractor and the Department to determine allocability, allowability and reasonableness of costs prior to incurrence, thereby avoiding subsequent disallowance and disputes; and assure prudent expenditure of public funds. Areas generally covered by advance understandings include compensation, welfare benefits, labor relations, retirement plans, training, educational assistance, awards programs, employee assistance, and paid leave and holidays. It is understood that any advance understandings will be appended to the contract.

It is the Department's intention that nothing in an advance understanding will restrict the Contractor's ability to attract and retain critically skilled employees to meet DOE mission objectives. Moreover, it is the Contractor's responsibility to notify DOE when any obstacles are encountered that could impact the recruitment and retention of critically skilled employees.

b. Labor Relations

The Contractor shall maintain positive labor-management relations. The Contractor shall respect the right of employees to self-organize, to form, join or assist the labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and also to have the right to refrain from any or all of such activities.

As the Contractor will be responsible at the time of transition for performing substantially the same operations as the previous incumbent Contractor, the Contractor shall be obligated to recognize the current bargaining agents and their existing collective bargaining agreements.

H.25 CORPORATE HOME OFFICE EXPENSES

No corporate home office expense of the Contractor shall be allowable under this Contract without the prior written approval of the Contracting Officer.

H.26 SEPARATE CORPORATE ENTITY

The work performed under this Contract by the Contractor shall be conducted by a separate corporate entity from its parent company(ies). The separate corporate entity must be set up solely to perform this Contract and shall be totally responsible for all Contract activities.

H.27 RESPONSIBLE CORPORATE OFFICIAL

Notwithstanding the Section H Contract Clause, entitled, "Performance Guarantee," the Government may contact, as necessary, the single responsible corporate official identified below, who is at a level above the Contractor and who is accountable for the performance of the Contractor. Should the responsible corporate official change during the period of the contract, the Contractor shall promptly notify the Government of the change in the individual to contact.

Name: Thomas F. Hash
(Offeror complete)

Position: President
(Offeror complete)

Company: Bechtel National, Inc.
(Offeror complete)

H.28 PERFORMANCE GUARANTEE

The Contractor is required by other provisions of this Contract to organize a dedicated corporate entity to carry out the work under the Contract. The Contractor's parent organization(s) or all member organizations if the Contractor is a joint venture, limited liability company, or other similar entity, shall guarantee performance as evidenced by the Performance Guarantee Agreement incorporated in the Contract in Section J, Appendix G. If the Contractor is a joint venture, limited liability company, or other similar entity where more than one organization is involved, the parent or all member organizations shall assume joint and several liability for the performance of the Contractor. In the event any of the signatories to the Performance Guarantee Agreement enters into proceedings related to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Contracting Officer.

H.29 CONSECUTIVE NUMBERING

Due to automated procedures employed in formulating this document, clauses contained within it may not always be consecutively numbered.

H.30 CONFIDENTIALITY OF INFORMATION

- a. To the extent that the work under this Contract requires that the Contractor be given access to confidential or proprietary business, technical, or financial information belonging to the Government or other companies, the Contractor shall, after receipt thereof, treat such information as confidential and agrees not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized by the Contracting Officer in writing. The foregoing obligations, however, shall not apply to:
 - (1) Information which, at the time of receipt by the Contractor, is in public domain;
 - (2) Information which is published after receipt thereof by the Contractor or otherwise becomes part of the public domain through no fault of the Contractor;
 - (3) Information which the Contractor can demonstrate was in its possession at the time of receipt thereof and was not acquired directly or indirectly from the Government or other companies;
 - (4) Information which the Contractor can demonstrate was received by it from a third party who did not require the Contractor to hold it in confidence.

- b. The Contractor shall obtain the written agreement, in a form satisfactory to the Contracting Officer, of each employee permitted access, whereby the employee agrees that he will not discuss, divulge or disclose any such information or data to any person or entity except those persons within the Contractor's organization directly concerned with the performance of the Contract.
- c. The Contractor agrees, if requested by the Government, to sign an agreement identical, in all material respects, to the provisions of this clause, with each company supplying information to the Contractor under this Contract, and to supply a copy of such agreement to the Contracting Officer.
- d. The Contractor agrees that upon request by DOE it will execute a DOE-approved agreement with any party whose facilities or proprietary data it is given access to or is furnished, restricting use and disclosure of the data or the information obtained from the facilities. Upon request by DOE, such an agreement shall also be signed by Contractor personnel.
- e. This clause shall flow down to all appropriate subcontracts.

H.31 ENVIRONMENTAL JUSTICE

The Contractor shall embrace the principles of Environmental Justice by complying with all applicable environmental regulations and by focusing on nondiscrimination in its programs that affect human health and the environment. The Contractor shall comply with Executive Order 12898 on Environmental Justice.

H.32 ENVIRONMENT, SAFETY, AND HEALTH

The Contractor will notify the Contracting Officer, in writing, of any written direction or instruction, which contradicts, limits, or compromises those environment, safety, and health requirements. The Contractor shall submit by September 15, 2001, and each year thereafter by September 15, an update to the approved Safety Management System, which is documented in the Integrated Safety Management Description Document (ISMDD), for the following fiscal year. Any changes to the approved Safety Management System, after the Contracting Officer's initial approval shall be approved by the Contracting Officer.

This Contract establishes the agreed-upon safety requirements and other operating parameters for the site-wide operations covered by the contract, except with respect to facilities/activities for which separate Authorization Agreement(s) are necessary. Authorization Agreements are to be used to establish, document, and control the safety requirements and other parameters for: (a) Category 2 non-reactor nuclear facilities new starts; (b) Weapon Program Startups; and (c) as directed by the Contracting Office to ensure adequate protection of the workers, the public, and the environment. Updates and

changes to any approved Authorization Agreements(s) shall be subject to Contracting Officer approval.

H.33 WITHDRAWAL OF WORK

- a. The Contracting Officer reserves the right to have any of the work contemplated by Section C, Statement of Work, of this contract performed by either another Contractor or to have the work performed by Government employees.
- b. Work may be withdrawn for any other reason deemed by the Contracting Officer to be in the best interests of the Government.
- c. If any work is withdrawn by the Contracting Officer, the Contractor agrees to fully cooperate with the new performing entity.

H.34 SUBCONTRACTS CONSENT AND FLOW DOWN REQUIREMENTS

- a. Prior to the placement of subcontracts and in accordance with the Section I, Contract Clause, DEAR 970.5244-1, entitled, "Contractor Purchasing System," the Contractor shall ensure that:
 - (1) They contain all of the clauses of this contract (altered when necessary for proper identification of the contracting parties) which contain a requirement for such inclusion in applicable subcontracts. Particular attention should be directed to the potential flow down applicability of the Section I, Contract Clauses, FAR 52.219-8, entitled, "Utilization of Small Business Concerns" and FAR 52.219-9, entitled, "Small Business Subcontracting Plan;"
 - (2) Any applicable subcontractor Certificate of Current Cost or Pricing Data (see FAR 15.804-2) and subcontractor Representations and Certifications are completed; and
 - (3) Any required prior notice and description of the subcontract is given to the Contracting Officer and any required consent is received. Except as may be expressly set forth therein, any consent by the Contracting Officer to the placement of subcontracts shall not be construed to constitute approval of the subcontractor or any subcontract terms or conditions, determination of the allowability of any cost, revision of this contract or any of the respective obligations of the parties thereunder, or creation of any subcontractor privity of contract with the Government.

H.35 ENVIRONMENTAL, SAFETY AND HEALTH COMPLIANCE DATA

Data required to assure environmental, safety and health compliance by the Contractor in its activities on behalf of the Department of Energy shall not be considered proprietary data in the context of DEAR 970.5227-1, "Rights In Technical Data--Facilities (Dec 2000)". DOE retains unlimited rights in all records, data, and audits involving compliance with Federal and State environmental, safety and health Statutes.

H.36 SECURITY

In addition to the provisions in DEAR 952.204-2, Security, the Contractor agrees to comply with Security regulations of other government agencies when applicable.

H.37 CONTRACTOR USE OF GOVERNMENT VEHICLES--WORK TO DOMICILE

Government furnished, owned or leased vehicles shall be used for official purposes only. Any cost or expense associated with non-official use of government furnished, owned or leased vehicles is an unallowable cost and is therefore not reimbursable under the contract. Official purposes do not ordinarily include transportation of a Contractor's employee between domicile and place of employment. However, Contractor employees driving government furnished, owned or leased vehicles to their personal residences will be considered to do so for official purposes if all the following conditions exist:

- (1) Unusual and special circumstances occur when Contractor employees are required to work unusual hours and regular transportation is not available.
- (2) The Contractor has defined in writing the special and unusual circumstances in which the driving of government furnished, owned or leased vehicles by Contractor employees to their personal residences will be considered used for official purposes and the DOE Contracting Officer has approved them.
- (3) The Contractor has designated, in writing, specific individuals who are authorized to approve the driving of government vehicles by Contractor employees to their personal residences.
- (4) The Contractor maintains records necessary to clearly establish the extent that home-to-work transportation was for official purposes. The Contractor shall determine, subject to approval of the Contracting Officer, the organizational level at which the records should be maintained and kept.

The records should be easily accessible for audit and should contain, as a minimum, the following information:

- (a) Name and title of employee using the vehicle, as well as the names and titles of any passengers sharing the vehicles;

- (b) Name, Employee Identification Number, and title of person authorizing use;
 - (c) Vehicle license number;
 - (d) Date and time of day of vehicle use;
 - (e) Storage location of vehicle;
 - (f) Duration of use; and
 - (g) Special and unusual circumstances requiring home-to-work transportation and negative impact, if such approval is not granted. Approval should not be granted if bus services are reasonably available. The approving official should require the sharing of rides to the extent reasonably feasible when government vehicles are authorized.
- (5) The Contractor establishes and enforces penalties for employees who use or authorize the use of government vehicles for other than official purposes.
- (6) This clause shall flow down to subcontractors who utilize Government vehicles.

H.38 CONTRACTOR ACCEPTANCE OF NOTICES OF VIOLATION OR ALLEGED VIOLATIONS, FINES AND PENALTIES

- a. The Contractor shall accept, in its own name, notices of violations or alleged violations (NOVs/NOAVs) and fines and penalties issued by Federal or State regulators resulting from the Contractor's performance or work under this contract.
- b. The Contractor shall be free to conduct negotiations with regulators regarding NOVs/NOAVs, fines and penalties; however, the Contractor shall not make any commitments or offers to regulators which would bind the Government in any form or fashion, including monetary obligations, without receiving written concurrence from the Contracting Officer or his authorized representative prior to making any such offers/commitments. Failure to obtain such advance written approval may result in otherwise allowable costs being declared unallowable and/or the Contractor being liable for any excess costs to the Government associated with or resulting from such offers/commitments.

H.39 ELECTRONIC COMMERCE

In compliance with the Government's initiative of "Streamlining Procurement Through Electronic Commerce," and presenting a "single face" to industry, the Contractor shall

strive to implement, within available funding, an Electronic Commerce System that will generate a paperless, automated, integrated procurement/payment system. This system shall, to the maximum practicable extent, subject to DOE approval, allow for: electronic request for quotations, quotations, and purchase orders, electronic invoices and remittance advice; full integration between the procurement, receiving, inventory control and accounting systems; and, accounting system programs that compare invoices, receipts and orders and automatically issue electronic funds transfer payments.

H.40 CONTROL OF NUCLEAR MATERIALS

- a. As used in this clause, the term "Nuclear Materials" is a collective term which includes source material, Special Nuclear Material, and those other materials to which, by direction of DOE, the provisions of DOE's Orders or Directives or the Nuclear Regulatory Commission regarding the control of Nuclear Materials, which have been or may be furnished to the Contractor by DOE, apply. The Contractor shall, in a manner satisfactory to the Contracting Officer, establish accounting and measurement procedures, maintain current records and institute appropriate control measures for Nuclear Materials in its possession commensurate with the national security and DOE policy. The Contractor shall make such reports and permit such inspections as DOE may require with reference to nuclear materials. The Contractor shall take all reasonable steps and precautions to protect such materials against theft and misappropriations and to minimize all losses of such materials.
- b. Transfers of Nuclear Materials shall only be made with the prior written approval of the Contracting Officer, or authorized designee. Nuclear Materials in the Contractor's possession, custody, or control shall be used only for furtherance of the work under this contract. The Contractor shall be responsible for the control of such Nuclear Materials in accordance with applicable DOE Orders and Directives regarding the control of Nuclear Materials, which have been or may be issued to the Contractor by DOE, and shall make a part of each purchase order, subcontract, and other commitment involving the use of Nuclear Materials for which the Contractor has accountability, which it enters into under this contract, appropriate terms and conditions for the use of Nuclear Materials and the responsibilities of the subcontractor or vendor regarding control of Nuclear Materials. In the case of fixed-price purchase orders, subcontracts, or other commitments involving the use of Nuclear Materials for which the Contractor has accountability, the terms and conditions with respect to Nuclear Materials shall also include the financial responsibilities, if any, regarding such items as losses, scrap recovery, product recovery, and disposal.

H.41 LITIGATION MANAGEMENT PLAN

The Contractor shall prepare a Litigation Management Plan which shall be submitted to the Contracting Officer for approval within 60 days after February 12, 2001. The purpose of the Plan will be to control the cost of litigation and to provide for employment of only that level of private counsel appropriate to a particular requirement. The Plan shall comply with the Guidelines set forth in DOE Acquisition Letter 94-13 of August 25, 1994, and such further instructions as provided by the Contracting Officer.

H.42 SERVICE CONTRACT ACT

The Service Contract Act of 1965 (P.L. 89-286) is not applicable to contracts for the operation of DOE facilities. It is, however, applicable to subcontracts awarded by Contractors operating DOE facilities. The Contractor shall insert in all subcontracts of the character to which the Service Contract Act, as amended, applies the applicable clause specified in FAR 22.1005 or FAR 22.1006, with such modifications as appropriate to reflect the Contractor/subcontractor relationship.

H.43 AGE DISCRIMINATION IN EMPLOYMENT

The Contractor shall not discriminate against any employee, applicant for employment, or former employee on the basis of age. The Contractor shall comply with the Age Discrimination in Employment Act, with any State or local legislation regarding discrimination based on age, and with all applicable regulations thereunder.

H.44 DETERMINATION OF APPROPRIATE LABOR STANDARDS

DOE shall determine the appropriate labor standards, in accordance with the Service Contract Act, the Davis-Bacon Act, or other applicable labor laws which shall apply to work performed under this contract. The Contractor shall provide such information in the form and time frame required by DOE, as may be necessary for DOE to make such labor standards determinations. The Contractor will then be responsible for ensuring that the appropriate labor standards provisions are included in subcontracts, and for obtaining and applying the appropriate wage determinations.

H.45 APPLICATION OF LABOR POLICIES AND PRACTICES

The Contractor agrees to conduct its labor relations program in accordance with DOE's intent that labor policies and practices reflect the best experience of American industry in aiming to achieve the type of stable labor-management relations essential to the successful accomplishment of DOE's programs at reasonable cost. Collective bargaining

will be left to the orderly processes of negotiation and agreement between Contractor management and certified employee representatives with maximum possible freedom from Government involvement. For working on DOE facilities and programs critical to the National interest, Contractor management's responsibility includes the duty to adopt practices which are fundamental to the friendly adjustment of disputes, and which experience has shown promote orderly collective bargaining relationships.

H.46 REIMBURSEMENT OF COST AND ALLOWABLE COST PRINCIPLES FOR TRANSITION PERIOD

- a. Reimbursement of allowable cost for the transition period will be through the voucher (i.e., invoice) process. DOE will provide the selected Offeror with a detailed description of DOE's voucher process at time of transition.
- b. Allowability of costs for the transition period shall be determined in accordance with Federal Acquisition Regulation 52.216-7, "Allowable Cost and Payment."

H.47 ALLOCATION OF RESPONSIBILITIES FOR CONTRACTOR ENVIRONMENTAL COMPLIANCE ACTIVITIES

- a. This clause allocates the responsibilities of DOE and the Contractor, referred to collectively as "the parties" for implementing the environmental requirements at facilities within the scope of the contract. In this clause, the term "environmental requirements" means requirements imposed by applicable Federal, state and local environmental laws and regulations, including, without limitation, statutes, ordinances, regulations, court orders, consent decrees, administrative orders or compliance agreements, consent orders, permits, and licenses.
- b. Liability and responsibility for civil fines or penalties arising from or related to violations of environmental requirements shall be borne by the party that caused the violation irrespective of the fact that the cognizant regulatory authority may assess any such fine or penalty upon either party or both parties without regard to the allocation of responsibility or liability under this contract. This contractual allocation of liability for any such fine or penalty is effective regardless of which party signs permit applications, manifests, reports or other required documents, is a permittee, or is the named subject of an enforcement action or assessment of a fine or penalty.
- c. Regardless of which party to this contract is the named subject of an enforcement action for noncompliance with environmental requirements by the cognizant regulatory authority, liability for payment of any fine or penalty will be governed by provisions of this contract related to allowable costs. If the named subject of an enforcement action or assessment of a fine or penalty is DOE and the fine or penalty would not otherwise be reimbursable under the allowable cost and pre-existing conditions provisions of this contract if the Contractor was the named

subject of the enforcement action, the Contractor will either pay the fine or penalty or reimburse the DOE (if DOE pays the fine or penalty). The governing provisions of the contract include, without limitation, DEAR 970.5231-4, entitled "Pre-Existing Conditions."

H.48 PRICE ANDERSON AMENDMENTS ACT NONCOMPLIANCE

The Contractor shall establish an internal Price Anderson Amendments Act noncompliance identification, tracking, and corrective action system and shall provide access to and fully support DOE reviews of the system. The Contractor shall also implement a Price Anderson Amendments Act reporting process which meets applicable DOE standards. The Contractor shall be accountable for ensuring that subcontractors adhere to these requirements.

H.49 OTHER CONTRACTORS

There are several other prime Contractors and support service Contractors or other interested parties that the Contractor will interface with in order to accomplish the program mission in an effective and efficient manner. It is expected that the Contractor will cooperate and interface appropriately with all such parties in executing and accomplishing the program requirements. Should there be any conflicts or issues that cannot be resolved by the Contractors, DOE will intervene as necessary and appropriate.

H.50 CONTRACTOR ACCEPTANCE OF OCRWM BASELINE DOCUMENTATION

The Contractor shall accept the Office of Civilian Radioactive Waste Management baseline documentation and maintain the baseline in accordance with the Baseline Change Control System (Reference DOE/RW-0409), and the Configuration Management Information System (Reference DOE/RW- 0415).

H.51 SAFETY CONSCIOUS WORK ENVIRONMENT

In conformity with the Nuclear Regulatory Commission's (NRC) May 14, 1996, Policy Statement, "Freedom of Employees in the Nuclear Industry to Raise Safety Concerns Without Fear of Retaliation" (61 Federal Register 24336), the Contractor must maintain a working environment in which the Contractor's employees are free to raise safety concerns to the Contractor, to the DOE, or to other government agencies without fear of retaliation. The Contractor specifically agrees to comply with Section 211 of the Energy Reorganization Act (42 U.S.C.A. § 5851), which prohibits NRC licensees or applicants for a license and their contractors or subcontractors, and DOE contractors with Price Anderson indemnification, from discharging or otherwise discriminating against any employee because he or she (i) notifies his/her employer of an alleged violation of the Atomic Energy Act or the Energy Reorganization Act; or (ii) refuses to engage in any

practice made unlawful by either of said acts after having identified the alleged illegality to his/her employer; or (iii) testifies in or commences a Federal or State proceeding or enforcement action relating to either of said acts; or (iv) assists or participates in such a proceeding or in any other action to carry out the purpose of said acts. The Contractor shall inform its employees and management of the importance of raising safety concerns and how to raise safety concerns through the Contractor's management, through the DOE's management (including, without limitation, use of the OCRWM Employee Concerns Program), and through other government agencies.

H.52 "SIGNIFICANT MATTERS" FOR LEGAL MANAGEMENT PURPOSES

For the purposes of compliance with 10 CFR Part 719 and in implementing the Litigation Management Plan specified in Section H, Contract Clause H.41, the following matters have been determined to be "significant matters" under 10 CFR § 719.2:

- (a) An employee complaint filed under the Department of Energy regulations at 10 CFR Part 708, "DOE Employee Protection Program";
- (b) An employee complaint filed under the Federal Acquisition Regulation at 48 CFR Subpart 3.9, "Whistleblower Protections for Contractor Employees";
- (c) An employee complaint filed under the Nuclear Regulatory Commission regulations at 10 CFR 63.9, "Employee protection"; or
- (d) An employee complaint filed under any other employee protection regulations that implement Section 211 of the Energy Reorganization Act, 42 U.S.C.A. § 5851.

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Modification No. M035

PART II – CONTRACT CLAUSES

SECTION I

PART II - CONTRACT CLAUSES

SECTION I

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Note 1: The references cited herein are from the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1), the U.S. Department of Energy Acquisition Regulation (DEAR) (48 CFR Chapter 9), and the U.S. Department of Energy Procurement Regulations (DOE-PR) (41 CFR Chapter 9).

Note 2: “(Modified)” means that a minor change(s) in wording of the clause has been made for the purpose of clarification only and not with the intent of altering the meaning, intent, substance, or the principles expressed in the clause.

PART II

SECTION I

CONTRACT CLAUSES

**I.1. FAR 52.202-1 DEFINITIONS (DEC 2001) (As modified by DEAR 952.202-1
DEFINITIONS (MAR 1995))**

Definitions (Dec 2001)

- (a) "Agency head" or "head of the agency" means the Secretary (Attorney General, Administrator, Governor, Chairperson, or other chief official, as appropriate) of the agency, unless otherwise indicated, including any deputy or assistant chief official of the executive agency.
- (b) "Commercial component" means any component that is a commercial item.
- (c) "Commercial item" means-
 - (1) Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and that-
 - (i) Has been sold, leased, or licensed to the general public; or
 - (ii) Has been offered for sale, lease, or license to the general public;
 - (2) Any item that evolved from an item described in paragraph (c)(1) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;
 - (3) Any item that would satisfy a criterion expressed in paragraphs (c)(1) or (c)(2) of this clause, but for-
 - (i) Modifications of a type customarily available in the commercial marketplace; or
 - (ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. "Minor" modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the

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purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

- (4) Any combination of items meeting the requirements of paragraphs (c)(1), (2), (3), or (5) of this clause that are of a type customarily combined and sold in combination to the general public;
- (5) Installation services, maintenance services, repair services, training services, and other services if-
 - (i) Such services are procured for support of an item referred to in paragraph (c)(1), (2), (3), or (4) of this definition, regardless of whether such services are provided by the same source or at the same time as the item; and
 - (ii) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government
- (6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed. For purposes of these services-
 - (i) "Catalog price" means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and
 - (ii) "Market prices" means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.
- (7) Any item, combination of items, or service referred to in paragraphs (c)(1) through (c)(6), notwithstanding the fact that the item, combination of

items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Contractor; or

- (8) A non-developmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments.
- (d) "Component" means any item supplied to the Government as part of an end item or of another component, except that for use in 52.225-9, and 52.225-11 see the definitions in 52.225-9(a) and 52.225-11(a).
- (e) "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.
- (f) "Non-developmental item" means-
 - (1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;
 - (2) Any item described in paragraph (f)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or
 - (3) Any item of supply being produced that does not meet the requirements of paragraph (f)(1) or (f)(2) solely because the item is not yet in use. (g) Except as otherwise provided in this contract, the term "subcontracts" includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this contract.

I.2. FAR 52.204-1 APPROVAL OF CONTRACT (DEC 1989)

This Contract is subject to the written approval of the DOE Procurement Executive or designee and shall not be binding until so approved.

I.3. FAR 52.225-1 BUY AMERICAN ACT-SUPPLIES (MAY 2002)

(a) Definitions. As used in this clause-

"Component" means an article, material, or supply incorporated directly into an end product.

"Cost of components" means-

- (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

"Domestic end product" means-

- (1) An unmanufactured end product mined or produced in the United States; or
- (2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

"End product" means those articles, materials, and supplies to be acquired under the contract for public use.

"Foreign end product" means an end product other than a domestic end product.

"United States" means the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leased bases.

- (b) The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.
- (c) Offerors may obtain from the Contracting Officer a list of foreign articles that the Contracting Officer will treat as domestic for this contract.
- (d) The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the solicitation entitled "Buy American Act Certificate."

I.4. FAR 52.225-11 BUY AMERICAN ACT-CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (MAY 2002)

- (a) Definitions. As used in this clause-

"Component" means an article, material, or supply incorporated directly into a construction material.

"Construction material" means an article, material, or supply brought to the construction site by the Contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

"Cost of components" means-

- (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

"Designated country" means any of the following countries:

Aruba	Kiribati
Austria	Korea, Republic of
Bangladesh	Lesotho
Belgium	Liechtenstein
Benin	Luxembourg
Bhutan	Malawi
Botswana	Maldives
Burkina Faso	Mali
Burundi	Mozambique
Canada	Nepal
Cape Verde	Netherlands
Central African Republic	Niger
Chad	Norway
Comoros	Portugal
Denmark	Rwanda
Djibouti	Sao Tome and Principe
Equatorial Guinea	Sierra Leone
Finland	Singapore
France	Somalia

Gambia	Spain
Germany	Sweden
Greece	Switzerland
Guinea	Tanzania U.R.
Guinea-Bissau	Togo
Haiti	Tuvalu
Hong Kong	Uganda
Iceland	United Kingdom
Ireland	Vanuatu
Israel	Western Samoa
Italy	Yemen
Japan	

"Designated country construction material" means a construction material that-

- (1) Is wholly the growth, product, or manufacture of a designated country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different construction material distinct from the materials from which it was transformed.

"Domestic construction material" means-

- (1) An unmanufactured construction material mined or produced in the United States; or

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- (2) A construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic.

"Foreign construction material" means a construction material other than a domestic construction material.

"North American Free Trade Agreement country" means Canada or Mexico.

"North American Free Trade Agreement country construction material" means a construction material that-

- (1) Is wholly the growth, product, or manufacture of a North American Free Trade Agreement (NAFTA) country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a NAFTA country into a new and different construction material distinct from the materials from which it was transformed.

"United States" means the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leased bases.

(b) Construction materials.

- (1) This clause implements the Buy American Act (41 U.S.C. 10a - 10d) by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the Trade Agreements Act and the North American Free Trade Agreement (NAFTA) apply to this acquisition. Therefore, the Buy American Act and Balance of Payments Program restrictions are waived for designated country and NAFTA country construction materials.
- (2) The Contractor shall use only domestic, designated country, or NAFTA country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.
- (3) The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the Government as follows:

None

[Contracting Officer to list applicable excepted materials or indicate "none"]

- (4) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) of this clause if the Government determines that-
 - (i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the restrictions of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;
 - (ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or
 - (iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.
- (c) Request for determination of inapplicability of the Buy American Act.
 - (1) (i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including- (A) A description of the foreign and domestic construction materials; (B) Unit of measure; (C) Quantity; (D) Price; (E) Time of delivery or availability; (F) Location of the construction project; (G) Name and address of the proposed supplier; and (H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.
 - (ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.
 - (iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

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- (iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.
- (2) If the Government determines after contract award that an exception to the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.
- (3) Unless the Government determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act. (d) Data. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Price Comparison			
Construction Material Description	Unit of Measure	Quantity	Price (Dollars)*
Item 1:			
Foreign construction material			
Domestic construction material			
Item 2:			
Foreign construction material			
Domestic construction material			

[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[* Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).]

I.5. FAR 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (DEC 2001)

Subcontracts for Commercial Items (Dec 2001)

(a) Definitions. As used in this clause-

"Commercial item" has the meaning contained in the clause at 52.202-1, Definitions.

"Subcontract" includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(c) (1) The Contractor shall insert the following clauses in subcontracts for commercial items:

- (i) 52.219-8, Utilization of Small Business Concerns (Oct 2000) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$500,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.
- (ii) 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).
- (iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001) (38 U.S.C. 4212(a));
- (iv) 52.222-36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793).

- (v) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (June 2000) (46 U.S.C. Appx 1241) (flowdown not required for subcontracts awarded beginning May 1, 1996).
- (2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.
- (d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

I.6. FAR 52.247-67 SUBMISSION OF COMMERCIAL TRANSPORTATION BILLS TO THE GENERAL SERVICES ADMINISTRATION FOR AUDIT (JUN 1997)

- (a) (1) In accordance with paragraph (a)(2) of this clause, the Contractor shall submit to the General Services Administration (GSA) for audit, legible copies of all paid freight bills/invoices, commercial bills of lading (CBL's), passenger coupons, and other supporting documents for transportation services on which the United States will assume freight charges that were paid
 - (i) By the Contractor under a cost-reimbursement contract; and
 - (ii) By a first-tier subcontractor under a cost-reimbursement subcontract thereunder.
- (2) Cost-reimbursement Contractors shall only submit for audit those CBL's with freight shipment charges exceeding \$50.00. Bills under \$50.00 shall be retained on-site by the Contractor and made available for GSA on-site audits. This exception only applies to freight shipment bills and is not intended to apply to bills and invoices for any other transportation services.
- (b) The Contractor shall forward copies of paid freight bills/invoices, CBL's, passenger coupons, and supporting documents as soon as possible following the end of the month, in one package to the:

General Services Administration
Attn: FWA
1800 F Street, NW
Washington, DC 20405.

The Contractor shall include the paid freight bills/invoices, CBL's, passenger coupons, and supporting documents for first-tier subcontractors under a cost-reimbursement contract. If the inclusion of the paid freight bills/invoices, CBL's, passenger coupons, and supporting documents for any subcontractor in the shipment is not practicable, the documents may be forwarded to GSA in a separate package.

- (c) Any original transportation bills or other documents requested by GSA shall be forwarded promptly by the Contractor to GSA. The Contractor shall ensure that the name of the contracting agency is stamped or written on the face of the bill before sending it to GSA.
- (d) A statement prepared in duplicate by the Contractor shall accompany each shipment of transportation documents. GSA will acknowledge receipt of the shipment by signing and returning the copy of the statement. The statement shall show
 - (1) The name and address of the Contractor;
 - (2) The contract number including any alphanumeric prefix identifying the contracting office;
 - (3) The name and address of the contracting office;
 - (4) The total number of bills submitted with the statement; and
 - (5) A listing of the respective amounts paid or, in lieu of such listing, an adding machine tape of the amounts paid showing the Contractor's voucher or check numbers.

I.7. FAR 52.249-6 TERMINATION (COST-REIMBURSEMENT) (SEP1996)

- (a) The Government may terminate performance of work under this contract in whole or, from time to time, in part, if-
 - (1) The Contracting Officer determines that a termination is in the Government's interest; or
 - (2) The Contractor defaults in performing this contract and fails to cure the default within 10 days (unless extended by the Contracting Officer) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.

- (b) The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying whether termination is for default of the Contractor or for convenience of the Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the Contractor was not in default or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of the Government.
- (c) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
 - (1) Stop work as specified in the notice.
 - (2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract.
 - (3) Terminate all subcontracts to the extent they relate to the work terminated.
 - (4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
 - (5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this contract; approval or ratification will be final for purposes of this clause.
 - (6) Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Government-
 - (i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated;

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- (ii) The completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government; and
 - (iii) The jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this contract, the cost of which the Contractor has been or will be reimbursed under this contract.
- (7) Complete performance of the work not terminated.
- (8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.
- (9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in paragraph (c)(6) of this clause; provided, however, that the Contractor
 - (i) is not required to extend credit to any purchaser and
 - (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.
- (d) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.
- (e) After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept the items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items,

or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

- (f) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.
- (g) Subject to paragraph (f) of this clause, the Contractor and the Contracting Officer may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The contract shall be amended, and the Contractor paid the agreed amount.
- (h) If the Contractor and the Contracting Officer fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor, and shall pay that amount, which shall include the following:
 - (1) All costs reimbursable under this contract, not previously paid, for the performance of this contract before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue those costs as rapidly as practicable.
 - (2) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in paragraph (h)(1) of this clause.
 - (3) The reasonable costs of settlement of the work terminated, including-
 - (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

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- (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
 - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. If the termination is for default, no amounts for the preparation of the Contractor's termination settlement proposal may be included.
- (4) A portion of the fee payable under the contract, determined as follows:
- (i) If the contract is terminated for the convenience of the Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in subcontractors' termination proposals, less previous payments for fee.
 - (ii) If the contract is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by the Government is to the total number of articles (or amount of services) of a like kind required by the contract.
- (5) If the settlement includes only fee, it will be determined under paragraph (h)(4) of this clause.
- (i) The cost principles and procedures in Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.
 - (j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (f), (h), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (f) and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (f), (h) or (l) of this clause, the Government shall pay the Contractor-
 - (1) The amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken; or
 - (2) The amount finally determined on an appeal.

- (k) In arriving at the amount due the Contractor under this clause, there shall be deducted-
 - (1) All unliquidated advance or other payments to the Contractor, under the terminated portion of this contract;
 - (2) Any claim which the Government has against the Contractor under this contract; and
 - (3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Contractor or sold under this clause and not recovered by or credited to the Government.
- (l) The Contractor and Contracting Officer must agree to any equitable adjustment in fee for the continued portion of the contract when there is a partial termination. The Contracting Officer shall amend the contract to reflect the agreement.
- (m)
 - (1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.
 - (2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.
- (n) The provisions of this clause relating to fee are inapplicable if this contract does not include a fee.

I.8. FAR 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make

their full text available. Also, the full text of the clause may be accessed electronically at this/these address(es):

Federal Acquisition Regulations – <http://www.arnet.gov/far/>

1. FAR 52.203-3 GRATUITIES (APR 1984)
2. FAR 52.203-5 COVENANT AGAINST CONTINGENT FEES (APR 1984)
3. FAR 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1995)
4. FAR 52.203-7 ANTI-KICKBACK PROCEDURES (JUL 1995)
5. FAR 52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)
6. FAR 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)
7. FAR 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 1997)
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46. FAR 52.230-2 COST ACCOUNTING STANDARDS (APR 1998)
47. FAR 52.230-6 ADMINISTRATION OF COST ACCOUNTING STANDARDS (NOV 1999)
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50. FAR 52.233-1 DISPUTES (DEC 1998) ALTERNATE I (DEC 1991)
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- 52. FAR 52.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984)
- 53. FAR 52.237-3 CONTINUITY OF SERVICES (JAN 1991)
- 54. FAR 52.239-1 PRIVACY OR SECURITY SAFEGUARDS (AUG 1996)
- 55. FAR 52.242-1 NOTICE OF INTENT TO DISALLOW COSTS (APR 1984)
- 56. FAR 52.242-3 PENALTIES FOR UNALLOWABLE COSTS (OCT 1995)
- 57. FAR 52.242-13 BANKRUPTCY (JUL 1995)
- 58. FAR 52.244-5 COMPETITION IN SUBCONTRACTING (DEC 1996)
- 59. FAR 52.246-25 LIMITATION OF LIABILITY - SERVICES
- 60. FAR 52.247-1 COMMERCIAL BILL OF LADING NOTATIONS (APR 1984)
- 61. FAR 52.247-63 PREFERENCE FOR U.S. FLAG AIR CARRIERS (JAN 1997)
- 62. FAR 52.247-64 PREFERENCE FOR PRIVATELY-OWNED U.S. FLAG COMMERCIAL VESSELS (JUN 1997)
- 63. FAR 52.249-14 EXCUSABLE DELAYS (APR 1984)
- 64. FAR 52.251-1 GOVERNMENT SUPPLY SOURCES (APR 1984)
- 65. FAR 52.251-2 INTERAGENCY FLEET MANAGEMENT SYSTEM VEHICLES AND RELATED SERVICES (JAN 1991)
- 66. FAR 52.253-1 COMPUTER-GENERATED FORMS (JAN 1991)

I.9. FAR 52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)

- (a) The use in this solicitation or Contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the clause.
- (b) The use in this solicitation or Contract of any Department of Energy Acquisition Regulation (48 CFR Chapter 9) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

I.10. DEAR 952.203-70 WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEC 2000)

- (a) The contractor shall comply with the requirements of "DOE Contractor Employee Protection Program" at 10 CFR part 708 for work performed on behalf of DOE directly related to activities at DOE-owned or-leased sites.
- (b) The contractor shall insert or have inserted the substance of this clause, including this paragraph (b), in subcontracts at all tiers, for subcontracts involving work performed on behalf of DOE directly related to activities at DOE-owned or leased sites.

I.11. DEAR 952.204-2 SECURITY (MAY 2002)

- (a) *Responsibility.* It is the Contractor's duty to safeguard all classified information, special nuclear material, and other DOE property. The Contractor shall, in accordance with DOE security regulations and requirements, be responsible for safeguarding all classified information and protecting against sabotage, espionage, loss or theft of the classified documents and material in the Contractor's possession in connection with the performance of work under this contract. Except as otherwise expressly provided in this contract, the Contractor shall, upon completion or termination of this contract, transmit to DOE any classified matter in the possession of the Contractor or any person under the Contractor's control in connection with performance of this contract. If retention by the Contractor of any classified matter is required after the completion or termination of the contract, the Contractor shall identify the items and types or categories of matter proposed for retention, the reasons for the retention of the matter, and the proposed period of retention. If the retention is approved by the Contracting Officer, the security provisions of the contract shall continue to be applicable to the matter retained. Special nuclear material shall not be retained after the completion or termination of the contract.
- (b) *Regulations.*(Modified) The Contractor agrees to comply with all security regulations and requirements of DOE in effect on the date of award.
- (c) *Definition of classified information.* The term "classified information" means Restricted Data, Formerly Restricted Data, or National Security Information.
- (d) *Definition of restricted data.* The term "Restricted Data" means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended.
- (e) *Definition of formerly restricted data.* The term "Formerly Restricted Data" means all data removed from the Restricted Data category under Section 142 d. of the Atomic Energy Act of 1954, as amended.
- (f) *Definition of National Security Information.* The term "National Security Information" means any information or material, regardless of its physical form or characteristics, that is owned by, produced for or by, or is under the control of the United States Government, that has been determined pursuant to Executive Order 12356 or prior Orders to require protection against unauthorized disclosure, and which is so designated.

- (g) *Definition of Special Nuclear Material (SNM).* SNM means: (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, has been determined to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.
- (h) *Security clearance of personnel.* The Contractor shall not permit any individual to have access to any classified information, except in accordance with the Atomic Energy Act of 1954, as amended, Executive Order 12356, and the DOE's regulations or requirements applicable to the particular level and category of classified information to which access is required.
- (i) *Criminal liability.* It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any classified information that may come to the Contractor or any person under the Contractor's control in connection with work under this contract, may subject the Contractor, its agents, employees, or subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794; and EO 12356.)
- (j) *Foreign Ownership, Control or Influence.*
 - (1) The Contractor shall immediately provide the cognizant security office written notice of any change in the extent and nature of foreign ownership, control or influence over the Contractor which would affect any answer to the questions presented in the Certificate Pertaining to Foreign Interests, Standard Form 328 or the Foreign Ownership, Control or Influence questionnaire executed by the Contractor prior to the award of this contract. In addition, any notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice shall also be furnished concurrently to the Contracting Officer
 - (2) If a Contractor has changes involving foreign ownership, control or influence, DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, DOE will consider proposals made by the Contractor to avoid or mitigate foreign influences.

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- (3) If the cognizant security office at any time determines that the Contractor is, or is potentially, subject to foreign ownership, control or influence, the Contractor shall comply with such instructions as the Contracting Officer shall provide in writing to safeguard any classified information or special nuclear material.
- (4) The Contractor agrees to insert terms that conform substantially to the language of this clause, including the paragraph, in all subcontract under this contract that will require subcontractor employees to possess access authorizations. Additionally, the Contractor must require subcontractors to have an existing DOD or DOE Facility Clearance or submit a completed Certificate Pertaining to Foreign Interests, Standard Form 328, required in DEAR 952.204-73 prior to award of a subcontract. Information to be provided by a subcontractor pursuant to this clause may be submitted directly to the Contracting Officer. For purposes of this clause, subcontractor means any subcontractor or any tier and the term "Contracting Officer" means the DOE Contracting Officer. When this clause is included in a subcontract, the term "Contractor" shall mean Subcontractor and the term "contract" shall mean subcontract.
- (5) The Contracting Officer may terminate this contract for default either if the Contractor fails to meet obligations imposed by this clause or if the Contractor creates a FOCI situation in order to avoid performance or a termination for default. The Contracting Officer may terminate this contract for convenience if the Contractor becomes subject to FOCI and for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the FOCI problem.

I.12. DEAR 952.204-70 CLASSIFICATION/DECLASSIFICATION (SEP 1997)

In the performance of work under this contract, the Contractor or subcontractor shall comply with all provisions of the Department of Energy's regulations and mandatory DOE directives which apply to work involving the classification and declassification of information, documents, or material. In this section, "information" means facts, data, or knowledge itself; "document" means the physical medium on or in which information is recorded; and "material" means a product or substance which contains or reveals information, regardless of its physical form or characteristics. Classified information is "Restricted Data" and "Formerly Restricted Data" (classified under the Atomic Energy Act of 1954, as amended) and "National Security Information" (classified under Executive Order 12958 or prior Executive Orders).

The original decision to classify or declassify information is considered an inherently Governmental function. For this reason, only Government personnel may serve as

original classifiers, i.e., Federal Government Original Classifiers. Other personnel (Government or Contractor) may serve as derivative classifiers which involves making classification decisions based upon classification guidance which reflect decisions made by Federal Government Original Classifiers.

The Contractor or subcontractor shall ensure that any document or material that may contain classified information is reviewed by either a Federal Government or a Contractor Derivative Classifier in accordance with classification regulations including mandatory DOE directives and classification/declassification guidance furnished to the Contractor by the Department of Energy to determine whether it contains classified information prior to dissemination. For information which is not addressed in classification/declassification guidance, but whose sensitivity appears to warrant classification, the Contractor or subcontractor shall ensure that such information is reviewed by a Federal Government Original Classifier.

In addition, the Contractor or subcontractor shall ensure that existing classified documents (containing either Restricted Data or Formerly Restricted Data or National Security Information) which are in its possession or under its control are periodically reviewed by a Federal Government or Contractor Derivative Declassifier in accordance with classification regulations, mandatory DOE directives and classification/declassification guidance furnished to the Contractor by the Department of Energy to determine if the documents are no longer appropriately classified. Priorities for declassification review of classified documents shall be based on the degree of public and researcher interest and the likelihood of declassification upon review. Documents which no longer contain classified information are to be declassified. Declassified documents then shall be reviewed to determine if they are publicly releasable. Documents which are declassified and determined to be publicly releasable are to be made available to the public in order to maximize the public's access to as much Government information as possible while minimizing security costs.

The Contractor or subcontractor shall insert this clause in any subcontract which involves or may involve access to classified information.

I.13. DEAR 952.204-71 SENSITIVE FOREIGN NATIONS CONTROLS (APR 1994)

- (a) In connection with any activities in the performance of this contract, the Contractor agrees to comply with the "Sensitive Foreign Nations Controls" requirements attached to this contract, relating to those countries, which may from time to time, be identified to the Contractor by written notice as sensitive foreign nations. The Contractor shall have the right to terminate its performance under this contract upon at least 60 days' prior written notice to the Contracting Officer if the Contractor determines that it is unable, without substantially interfering with

its policies or without adversely impacting its performance to continue performance of the work under this contract as a result of such notification. If the Contractor elects to terminate performance, the provisions of this contract regarding termination for the convenience of the Government shall apply.

- (b) The provisions of this clause shall be included in any subcontracts.

I.14. DEAR 952.204-75 PUBLIC AFFAIRS (DEC 2000)

- (a) The Contractor must cooperate with the Department in releasing unclassified information to the public and news media regarding DOE policies, programs, and activities relating to its effort under the contract. The responsibilities under this clause must be accomplished through coordination with the Contracting Officer and appropriate DOE public affairs personnel in accordance with procedures defined by the Contracting Officer.
- (b) The Contractor is responsible for the development, planning, and coordination of proactive approaches for the timely dissemination of unclassified information regarding DOE activities onsite and offsite, including, but not limited to, operations and programs. Proactive public affairs programs may utilize a variety of communication media, including public workshops, meetings or hearings, open houses, newsletters, press releases, conferences, audio/visual presentations, speeches, forums, tours, and other appropriate stakeholder interactions.
- (c) The Contractor's internal procedures must ensure that all releases of information to the public and news media are coordinated through, and approved by, a management official at an appropriate level within the Contractor's organization.
- (d) The Contractor must comply with DOE procedures for obtaining advance clearances on oral, written, and audio/visual informational material prepared for public dissemination or use.
- (e) Unless prohibited by law, and in accordance with procedures defined by the Contracting Officer, the Contractor must notify the Contracting Officer and appropriate DOE public affairs personnel of communications or contacts with Members of Congress relating to the effort performed under the contract.
- (f) In accordance with procedures defined by the Contracting Officer, the Contractor must notify the Contracting Officer and appropriate DOE public affairs personnel of activities or situations that may attract regional or national news media attention and of non-routine inquiries from national news media relating to the effort performed under the contract.

- (g) In releases of information to the public and news media, the Contractor must fully and accurately identify the Contractor's relationship to the Department and fully and accurately credit the Department for its role in funding programs and projects resulting in scientific, technical, and other achievements.

I.15. DEAR 952.208-7 TAGGING OF LEASED VEHICLES (APR 1984)

- (a) DOE intends to use U.S. Government license tags.
- (b) While it is the intention that vehicles leased hereunder shall operate on Federal tags, the DOE reserves the right to utilize State tags if necessary to accomplish its mission. Should State tags be required, the Contractor shall furnish the DOE the documentation required by the State to acquire such tags.

I.16. DEAR 952.209-72 ORGANIZATIONAL CONFLICTS OF INTEREST (JUN 1997)

- (a) Purpose. The purpose of this clause is to ensure that the Contractor
 - (1) is not biased because of its financial, contractual, organizational, or other interests which relate to the work under this contract, and
 - (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this contract.
- (b) Scope. The restrictions described herein shall apply to performance or participation by the Contractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as "Contractor") in the activities covered by this clause as a prime Contractor, subcontractor, cosponsor, joint venture, consultant, or in any similar capacity. For the purpose of this clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.
 - (1) Use of Contractor's Work Product.

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(i) The Contractor shall be ineligible to participate in any capacity in Department contracts, subcontracts, or proposals therefor (solicited and unsolicited) which stem directly from the Contractor's performance of work under this Contract for a period of five years after the completion of this contract. Furthermore, unless so directed in writing by the Contracting Officer, the Contractor shall not perform any advisory and assistance services work under this Contract on any of its products or services or the products or services of another firm if the Contractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the Contractor from competing for follow-on contracts for advisory and assistance services.

(ii) If, under this contract, the Contractor prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the Contractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The Contractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the Contracting Officer, in which case, the restriction in this subparagraph shall not apply.

(iii) Nothing in this paragraph shall preclude the Contractor from offering or selling its standard and commercial items to the Government.

(2) Access to and use of information.

(i) If the Contractor, in the performance of this contract, obtains access to information, such as Department plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or data which has not been released or otherwise made available to the public, the Contractor agrees that without prior written approval of the Contracting Officer, it shall not:

- (A) use such information for any private purpose unless the information has been released or otherwise made available to the public;
- (B) compete for the work for the Department based on such information for a period of six (6) months after either the completion of this Contract or until such information is

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released or otherwise made available to the public,
whichever is first;

- (C) submit an unsolicited proposal to the Government which is based on such information until one year after such information is released or otherwise made available to the public; and
 - (D) release such information unless such information has previously been released or otherwise made available to the public by the Department.
- (ii) In addition, the Contractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or other confidential or privileged technical, business or financial information under this contract, it shall treat such information in accordance with any restrictions imposed on such information.
 - (iii) The Contractor may use technical data it first produces under this Contract for its private purposes consistent with paragraphs (B)(2)(I) (A) and (D) of this clause and the patent, rights in data, and security provisions of this contract.
- (c) Disclosure after award.
- (1) The Contractor agrees that, if changes, including additions, to the facts disclosed by it prior to award of this contract, occur during the performance of this contract, it shall make an immediate and full disclosure of such changes in writing to the Contracting Officer. Such disclosure may include a description of any action which the Contractor has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest. The Department may, however, terminate the Contract for convenience if it deems such termination to be in the best interest of the Government.
 - (2) In the event that the Contractor was aware of facts required to be disclosed or the existence of an actual or potential organizational conflict of interest and did not disclose such facts or such conflict of interest to the Contracting Officer, DOE may terminate this Contract for default.
- (d) Remedies. For breach of any of the above restrictions or for nondisclosure or misrepresentation of any facts required to be disclosed concerning this contract,

including the existence of an actual or potential organizational conflict of interest at the time of or after award, the Government may terminate the Contract for default, disqualify the Contractor from subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this contract.

- (e) Waiver. Requests for waiver under this clause shall be directed in writing to the Contracting Officer and shall include a full description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of the Government, the Contracting Officer may grant such a waiver in writing.
- (f) Subcontracts.
 - (1) The Contractor shall include a clause, substantially similar to this clause, including this paragraph (f), in subcontracts expected to exceed the simplified acquisition threshold determined in accordance with FAR Part 13 and involving the performance of advisory and assistance services as that term is defined at FAR 37.201. The terms "contract," "Contractor," and "Contracting Officer" shall be appropriately modified to preserve the Government's rights.
 - (2) Prior to the award under this Contract of any such subcontracts for advisory and assistance services, the Contractor shall obtain from the proposed subcontractor or consultant the disclosure required by DEAR 909.507-1, and shall determine in writing whether the interests disclosed present an actual or significant potential for an organizational conflict of interest. Where an actual or significant potential organizational conflict of interest is identified, the Contractor shall take actions to avoid, neutralize, or mitigate the organizational conflict to the satisfaction of the Contractor. If the conflict cannot be avoided or neutralized, the Contractor must obtain the approval of the DOE Contracting Officer prior to entering into the subcontract.

I.17. DEAR 952.217-70 ACQUISITION OF REAL PROPERTY (APR 1984)

- (a) Notwithstanding any other provisions of the Contract, the prior approval of the Contracting Officer shall be obtained when, in performance of this Contract, the Contractor acquires or proposes to acquire use of real property by:
 - (1) Purchase, on the Government's behalf or in the Contractor's own name, with title eventually vesting in the Government.
 - (2) Lease, and the Government assumes liability for, or will otherwise pay for the obligation under the lease as a reimbursable contract cost.

- (3) Acquisition of temporary interest through easement, license or permit, and the Government funds the entire cost of the temporary interest.
- (b) Justification of and execution of any real property acquisitions shall be in accordance and compliance with directions provided by the Contracting Officer.
- (c) The substance of this clause, including this paragraph (c), shall be included in any subcontract occasioned by this contract under which property described in paragraph (a) of this clause shall be acquired.

I.18. DEAR 952.223-75 PRESERVATION OF INDIVIDUAL OCCUPATIONAL RADIATION EXPOSURE RECORDS (APR 1984)

Individual occupational radiation exposure records generated in the performance of work under this Contract shall be subject to inspection by DOE and shall be preserved by the Contractor until disposal is authorized by DOE or at the option of the Contractor delivered to DOE upon completion or termination of the contract. If the Contractor exercises the foregoing option, title to such records shall vest in DOE upon delivery.

I.19. DEAR 952.224-70 PAPERWORK REDUCTION ACT (APR 1994)

- (a) In the event that it subsequently becomes a contractual requirement to collect or record information calling either for answer to identical questions from 10 or more persons other than Federal employees, or information from Federal employees which is to be used for statistical compilations of general public interest, the Paperwork Reduction Act will apply to this contract. No plan, questionnaire, interview guide, or other similar device for collecting information (whether repetitive or single-time) may be used without first obtaining clearance from the Office of Management and Budget (OMB).
- (b) The Contractor shall request the required OMB clearance from the Contracting Officer before expending any funds or making public contacts for the collection of data. The authority to expend funds and to proceed with the collection of data shall be in writing by the Contracting Officer. The Contractor must plan at least 90 days for OMB clearance. Excessive delay caused by the Government which arises out of causes beyond the control and without the fault or negligence of the Contractor will be considered in accordance with the clause entitled "Excusable Delays," if such clause is applicable. If not, the period of performance may be extended pursuant to this clause if approved by the Contracting Officer.

I.20. DEAR 952.226-74 DISPLACED EMPLOYEE HIRING PREFERENCE (JUN 1997)

(a) Definition.

Eligible employee means a current or former employee of a Contractor or subcontractor employed at a Department of Energy Defense Nuclear Facility

- (1) whose position of employment has been, or will be, involuntarily terminated (except if terminated for cause),
 - (2) who has also met the eligibility criteria contained in the Department of Energy guidance for Contractor work force restructuring, as may be amended or supplemented from time to time, and
 - (3) who is qualified for a particular job vacancy with the Department or one of its Contractors with respect to work under its Contract with the Department at the time the particular position is available.
- (b) Consistent with Department of Energy guidance for Contractor work force restructuring, as may be amended or supplemented from time to time, the Contractor agrees that it will provide a preference in hiring to an eligible employee to the extent practicable for work performed under this contract.
- (c) The requirements of this clause shall be included in subcontracts at any tier (except for subcontracts for commercial items pursuant to 41 U.S.C. 403) expected to exceed \$500,000.

I.21. DEAR 952.242-70 TECHNICAL DIRECTION (DEC 2000)

- (a) Performance of the work under this contract shall be subject to the technical direction of the DOE Contracting Officer's Representative (COR). The term "technical direction" is defined to include, without limitation:
- (1) Providing direction to the contractor that redirects contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details, or otherwise serve to accomplish the contractual Statement of Work.
 - (2) Providing written information to the contractor that assists in interpreting drawings, specifications, or technical portions of the work description.

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- (3) Reviewing and, where required by the contract, approving, technical reports, drawings, specifications, and technical information to be delivered by the contractor to the Government.
- (b) The contractor will receive a copy of the written COR designation from the contracting officer. It will specify the extent of the COR's authority to act on behalf of the contracting officer.
- (c) Technical direction must be within the scope of work stated in the contract. The COR does not have the authority to, and may not, issue any technical direction that:
 - (1) Constitutes an assignment of additional work outside the Statement of Work;
 - (2) Constitutes a change as defined in the contract clause entitled "Changes;"
 - (3) In any manner causes an increase or decrease in the total estimated contract cost, the fee (if any), or the time required for contract performance;
 - (4) Changes any of the expressed terms, conditions or specifications of the contract; or
 - (5) Interferes with the contractor's right to perform the terms and conditions of the contract.
- (d) All technical direction shall be issued in writing by the COR.
- (e) The contractor must proceed promptly with the performance of technical direction duly issued by the COR in the manner prescribed by this clause and within its authority under the provisions of this clause. If, in the opinion of the contractor, any instruction or direction by the COR falls within one of the categories defined in (c)(1) through (c)(5) of this clause, the contractor must not proceed and must notify the Contracting Officer in writing within five (5) working days after receipt of any such instruction or direction and must request the Contracting Officer to modify the contract accordingly. Upon receiving the notification from the contractor, the Contracting Officer must:
 - (1) Advise the contractor in writing within thirty (30) days after receipt of the contractor's a change under the Changes clause of the contract;

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- (2) Advise the contractor in writing within a reasonable time that the Government will issue a written change order; or
- (3) Advise the contractor in writing within a reasonable time not to proceed with the instruction or direction of the COR. [*81009]
- (f) A failure of the contractor and Contracting Officer either to agree that the technical direction is within the scope of the contract or to agree upon the contract action to be taken with respect to the technical direction will be subject to the provisions of the clause entitled "Disputes."

I.22. DEAR 952.250-70 NUCLEAR HAZARDS INDEMNITY AGREEMENT (JUN 1996)

- (a) Authority. This clause is incorporated into this Contract pursuant to the authority contained in subsection 170d. of the Atomic Energy Act of 1954, as amended (hereinafter called the Act.)
- (b) Definitions. The definitions set out in the Act shall apply to this clause.
- (c) Financial Protection. Except as hereafter permitted or required in writing by DOE, the Contractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability, as described in paragraph (d)(2) below. DOE may, however, at any time require in writing that the Contractor provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover such public liability, provided that the costs of such financial protection are reimbursed to the Contractor by DOE.
- (d) Indemnification.
 - (1) To the extent that the Contractor and other persons indemnified are not compensated by any financial protection permitted or required by DOE, DOE will indemnify the Contractor and other persons indemnified against
 - (i) claims for public liability as described in subparagraph (d)(2) of this clause; and
 - (ii) such legal costs of the Contractor and other persons indemnified as are approved by DOE, provided that DOE's liability, including such legal costs, shall not exceed the amount set forth in section 170e.(1)(B) of the Act in the aggregate for each nuclear incident or precautionary evacuation occurring within the United States or

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\$100 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.

- (2) The public liability referred to in subparagraph (d)(1) of this clause is public liability as defined in the Act which
 - (i) arises out of or in connection with the activities under this contract, including transportation; and
 - (ii) arises out of or results from a nuclear incident or precautionary evacuation, as those terms are defined in the Act.
- (e) Waiver of Defenses.
 - (1) In the event of a nuclear incident, as defined in the Act, arising out of nuclear waste activities, as defined in the Act, the Contractor, on behalf of itself and other persons indemnified, agrees to waive any issue or defense as to charitable or governmental immunity.
 - (2) In the event of an extraordinary nuclear occurrence which:
 - (i) Arises out of, results from, or occurs in the course of the construction, possession, or operation of a production or utilization facility; or
 - (ii) Arises out of, results from, or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facility; or
 - (iii) Arises out of or results from the possession, operation, or use by the Contractor or a subcontractor of a device utilizing special nuclear material or by-product material, during the course of the Contract activity; or
 - (iv) Arises out of, results from, or occurs in the course of nuclear waste activities, the Contractor, on behalf of itself and other persons indemnified, agrees to waive:
 - (A) Any issue or defense as to the conduct of the claimant (including the conduct of persons through whom the claimant derives its cause of action) or fault or persons indemnified, including, but not limited to:

- (1) Negligence;
 - (2) Contributory negligence;
 - (3) Assumption of risk; or
 - (4) Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God;
 - (B) Any issue or defense as to charitable or governmental immunity; and
 - (C) Any issue or defense based on any statute of limitations, if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or change and the cause thereof. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waiver shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified.
 - (v) The term extraordinary nuclear occurrence means an event which DOE has determined to be an extraordinary nuclear occurrence as defined in the Act. A determination of whether or not there has been an extraordinary nuclear occurrence will be made in accordance with the procedures in 10 CFR part 840.
 - (vi) For the purposes of that determination, "offsite" as that term is used in 10 CFR part 840 means away from "the contract location" which phrase means any DOE facility, installation, or site at which contractual activity under this Contract is being carried on, and any Contractor-owned or controlled facility, installation, or site at which the Contractor is engaged in the performance of contractual activity under this contract.
- (3) The waivers set forth above:

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- (i) Shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action;
 - (ii) Shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified;
 - (iii) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;
 - (iv) Shall not apply injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;
 - (v) Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefor are either payable or required to be provided under any workmen's compensation or occupational disease law;
 - (vi) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;
 - (vii) Shall be effective only with respect to those obligations set forth in this clause and in insurance policies, contracts or other proof of financial protection; and
 - (viii) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (A) the limit of liability provisions under subsection 170e. of the Act, and (B) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.
- (f) Notification and litigation of claims. The Contractor shall give immediate written notice to DOE of any known action or claim filed or made against the Contractor or other person indemnified for public liability as defined in paragraph (d)(2). Except as otherwise directed by DOE, the Contractor shall furnish promptly to DOE, copies of all pertinent papers received by the Contractor or filed with respect to such actions of claims. DOE shall have the right to, and may collaborate with, the Contractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right to

- (1) require the prior approval of DOE for the payment of any claim that DOE may be required to indemnify hereunder; and
- (2) appear through the Attorney General on behalf of the Contractor or other person indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE, the Contractor or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.
- (g) Continuity of DOE obligations. The obligations of DOE under this clause shall not be affected by any failure on the part of the Contractor to fulfill its obligation under this Contract and shall be unaffected by the death, disability, or termination of existence of the Contractor, or by the completion, termination or expiration of this contract.
- (h) Effect of other clauses. The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to, any other clause of this contract, including the clause entitled "Contract Disputes," provided, however, that this clause shall be subject to the clauses entitled "Covenant Against Contingent Fees," to the portion of a clause of this Contract providing specifically for examination of records relating to this Contract by the Comptroller General, and to any provisions that are later added to this Contract as required by applicable Federal law, including statutes, executive orders and regulations, to be included in Nuclear Hazards Indemnity Agreements.
- (i) Civil penalties. The Contractor and its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to civil penalties, pursuant to 234A of the Act, for violations of applicable DOE nuclear-safety related rules, regulations, or orders.
- (j) Criminal penalties. Any individual director, officer, or employee of the Contractor or of its subcontractors and suppliers who are indemnified under the provisions of this clause are subject to criminal penalties, pursuant to 223c. of the Act, for knowing and willful violation of the Atomic Energy Act of 1954, as amended, and applicable DOE nuclear safety-related rules, regulations or orders which violation results in, or, if undetected, would have resulted in a nuclear incident.
- (k) Inclusion in subcontracts. The Contractor shall insert this clause in any subcontract which may involve the risk of public liability, as that term is defined

in the Act and further described in paragraph (d)(2) above. However, this clause shall not be included in subcontracts in which the subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b. of the Act or NRC agreements of indemnification under section 170c. or "k." of the Act for the activities under the subcontract.

I.23. DEAR 952.251-70 CONTRACTOR EMPLOYEE TRAVEL DISCOUNTS (DEC 2000)

Contractor Employee Travel Discounts (DEC 2000)

- (a) The contractor shall take advantage of travel discounts offered to Federal contractor employee travelers by AMTRAK, hotels, motels, or car rental companies, when use of such discounts would result in lower overall trip costs and the discounted services are reasonably available. Vendors providing these services may require the contractor employee to furnish them a letter of identification signed by the authorized contracting officer.
- (b) Contracted airlines. Contractors are not eligible for GSA contract city pair fares.
- (c) Discount rail service. AMTRAK voluntarily offers discounts to Federal travelers on official business and sometimes extends those discounts to Federal contractor employees.
- (d) Hotels/motels. Many lodging providers extend their discount rates for Federal employees to Federal contractor employees.
- (e) Car rentals. The Military Traffic Management Command (MTMC) of the Department of Defense negotiates rate agreements with car rental companies that are available to Federal travelers on official business. Some car rental companies extend those discounts to Federal contractor employees.
- (f) Obtaining travel discounts.
 - (1) To determine which vendors offer discounts to Government contractors, the contractor may review commercial publications such as the Official Airline guides Official Traveler, Innovata, or National Telecommunications. The contractor may also obtain this information from GSA contract Travel Management Centers or the Department of Defense's Commercial Travel Offices.

- (2) The vendor providing the service may require the Government contractor to furnish a letter signed by the contracting officer. The following illustrates a standard letter of identification.

OFFICIAL AGENCY LETTERHEAD

TO: Participating Vendor

SUBJECT: OFFICIAL TRAVEL OF GOVERNMENT CONTRACTOR

(FULL NAME OF TRAVELER), the bearer of this letter is an employee of (COMPANY NAME) which has a contract with this agency under Government contract (CONTRACT NUMBER). During the period of the contract (GIVE DATES), AND WITH THE APPROVAL OF THE CONTRACT VENDOR, the employee is eligible and authorized to use available travel discount rates in accordance with Government contracts and/or agreements. Government Contract City Pair fares are not available to Contractors. SIGNATURE, Title and telephone number of Contracting Officer.

I.24. DEAR 952.215-70 KEY PERSONNEL (DEC 2000)

- (a) The personnel listed below or elsewhere in this contract [Section J, Appendix D] are considered essential to the work being performed under this contract. Before removing, replacing, or diverting any of the listed or specified personnel, the Contractor must:
 - (1) Notify the Contracting Officer reasonably in advance;
 - (2) submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract; and
 - (3) obtain the Contracting Officer's written approval. Notwithstanding the foregoing, if the Contractor deems immediate removal or suspension of any member of its management team is necessary to fulfill its obligation to maintain satisfactory standards of employee competency, conduct, and integrity under the clause at 48 CFR 970.5203-3, Contractor's Organization, the Contractor may remove or suspend such person at once, although the Contractor must notify Contracting Officer prior to or concurrently with such action.
- (b) The list of personnel may, with the consent of the contracting parties, be amended from time to time during the course of the contract to add or delete personnel.

I.25. DEAR 970.5203-1 MANAGEMENT CONTROLS (DEC 2000)

- (a) (1) The contractor shall be responsible for maintaining, as an integral part of its organization, effective systems of management controls for both

administrative and programmatic functions. Management controls comprise the plan of organization, methods, and procedures adopted by management to reasonably ensure that: the mission and functions assigned to the contractor are properly executed; efficient and effective operations are promoted; resources are safeguarded against waste, loss, mismanagement, unauthorized use, or misappropriation; all encumbrances and costs that are incurred under the contract and fees that are earned are in compliance with applicable clauses and other current terms, conditions, and intended purposes; all collections accruing to the contractor in connection with the work under this contract, expenditures, and all other transactions and assets are properly recorded, managed, and reported; and financial, statistical, and other reports necessary to maintain accountability and managerial control are accurate, reliable, and timely.

- (2) The systems of controls employed by the contractor shall be documented and satisfactory to DOE.
 - (3) Such systems shall be an integral part of the contractor's management functions, including defining specific roles and responsibilities for each level of management, and holding employees accountable for the adequacy of the management systems and controls in their areas of assigned responsibility.
 - (4) The contractor shall, as part of the internal audit program required elsewhere in this contract, periodically review the management systems and controls employed in programs and administrative areas to ensure that they are adequate to provide reasonable assurance that the objectives of the systems are being accomplished and that these systems and controls are working effectively.
- (b) The contractor shall be responsible for maintaining, as a part of its operational responsibilities, a baseline quality assurance program that implements documented performance, quality standards, and control and assessment techniques.

I.26. DEAR 970.5203-2 PERFORMANCE IMPROVEMENT AND COLLABORATION (DEC 2000)

- (a) The Contractor agrees that it shall affirmatively identify, evaluate, and institute practices, where appropriate, that will improve performance in the areas of environmental and health, safety, scientific and technical, security, business and administrative, and any other areas of performance in the management and operation of the contract. This may entail the alteration of existing practices or

the institution of new procedures to more effectively or efficiently perform any aspect of contract performance or reduce overall cost of operation under the contract. Such improvements may result from changes in organization, simplification of systems while retaining necessary controls, or any other approaches consistent with the statement of work and performance measures of this contract.

- (b) The Contractor agrees to work collaboratively with the Department, all other management and operating, DOE major facilities management Contractors and affiliated Contractors which manage or operate DOE sites or facilities for the following purposes:
 - (i) to exchange information generally,
 - (ii) to evaluate concepts that may be of benefit in resolving common issues, in confronting common problems, or in reducing costs of operations, and
 - (iii) to otherwise identify and implement DOE-complex-wide management improvements discussed in paragraph (a). In doing so, it shall also affirmatively provide information relating to its management improvements to such Contractors, including lessons learned, subject to security considerations and the protection of data proprietary to third parties.
- (c) The Contractor may consult with the Contracting Officer in those instances in which improvements being considered pursuant to paragraph (a) involve the cooperation of the DOE. The Contractor may request the assistance of the Contracting Officer in the communication of the success of improvements to other management and operating Contractors in accordance with paragraph (b) of this clause.
- (d) The Contractor shall notify the Contracting Officer and seek approval where necessary to fulfill its obligations under the contract. Compliance with this clause in no way alters the obligations of the Contractor under any other provision of this contract.

I.27. DEAR 970.5203-3 CONTRACTOR'S ORGANIZATION (DEC 2000)

- (a) Organization chart. As promptly as possible after the execution of this contract, the contractor shall furnish to the contracting officer a chart showing the names, duties, and organization of key personnel (see 48 CFR 952.215-70) to be employed in connection with the work, and shall furnish supplemental information to reflect any changes as they occur.

- (b) Supervisory representative of contractor. Unless otherwise directed by the contracting officer, a competent full-time resident supervisory representative of the contractor satisfactory to the contracting officer shall be in charge of the work at the site, and any work off-site, at all times.
- (c) Control of employees. The contractor shall be responsible for maintaining satisfactory standards of employee competency, conduct, and integrity and shall be responsible for taking such disciplinary action with respect to its employees as may be necessary. In the event the contractor fails to remove any employee from the contract work whom DOE deems incompetent, careless, or insubordinate, or whose continued employment on the work is deemed by DOE to be inimical to the Department's mission, the contracting officer may require, with the approval of the Secretary of Energy, the contractor to remove the employee from work under the contract. This includes the right to direct the contractor to remove its most senior key person from work under the contract for serious contract performance deficiencies.
- (d) Standards and procedures. The contractor shall establish such standards and procedures as are necessary to implement the requirements set forth in 48 CFR 970.0371. Such standards and procedures shall be subject to the approval of the contracting officer.

I.28. DEAR 970.5204-1 COUNTERINTELLIGENCE (DEC 2000)

- (a) The contractor shall take all reasonable precautions in the work under this contract to protect DOE programs, facilities, technology, personnel, unclassified sensitive information and classified matter from foreign intelligence threats and activities conducted for governmental or industrial purposes, in accordance with DOE Order 5670.3, Counterintelligence Program; Executive Order 12333, U.S. Intelligence Activities; and other pertinent national and Departmental Counterintelligence requirements.
- (b) The contractor shall appoint a qualified employee(s) to function as the Contractor Counterintelligence Officer. The Contractor Counterintelligence Officer will be responsible for conducting defensive Counterintelligence briefings and debriefings of employees traveling to foreign countries or interacting with foreign nationals; providing thoroughly documented written reports relative to targeting, suspicious activity and other matters of Counterintelligence interest; immediately reporting targeting, suspicious activity and other Counterintelligence concerns to the DOE Headquarters Counterintelligence Division; and providing assistance to other elements of the U.S. Intelligence Community as stated in the aforementioned Executive Order, the DOE Counterintelligence Order, and other

pertinent national and Departmental Counterintelligence requirements.

I.29. DEAR 970.5204-2 LAWS, REGULATIONS, AND DOE DIRECTIVES (DEC 2000)

- (a) In performing work under this contract, the contractor shall comply with the requirements of applicable Federal, State, and local laws and regulations (including DOE regulations), unless relief has been granted in writing by the appropriate regulatory agency. A List of Applicable Laws and regulations (List A) may be appended to this contract for information purposes. Omission of any applicable law or regulation from List A does not affect the obligation of the contractor to comply with such law or regulation pursuant to this paragraph.
- (b) In performing work under this contract, the contractor shall comply with the requirements of those Department of Energy directives, or parts thereof, identified in the List of Applicable Directives (List B) appended to this contract. Except as otherwise provided for in paragraph (d) of this clause, the contracting officer may, from time to time and at any time, revise List B by unilateral modification to the contract to add, modify, or delete specific requirements. Prior to revising List B, the contracting officer shall notify the contractor in writing of the Department's intent to revise List B and provide the contractor with the opportunity to assess the effect of the contractor's compliance with the revised list on contract cost and funding, technical performance, and schedule; and identify any potential inconsistencies between the revised list and the other terms and conditions of the contract. Within 30 days after receipt of the contracting officer's notice, the contractor shall advise the contracting officer in writing of the potential impact of the contractor's compliance with the revised list. Based on the information provided by the contractor and any other information available, the contracting officer shall decide whether to revise List B and so advise the contractor not later than 30 days prior to the effective date of the revision of List B. The contractor and the contracting officer shall identify and, if appropriate, agree to any changes to other contract terms and conditions, including cost and schedule, associated with the revision of List B pursuant to the clause of this contract entitled, "Changes."
- (c) Environmental, safety, and health (ES&H) requirements appropriate for work conducted under this contract may be determined by a DOE approved process to evaluate the work and the associated hazards and identify an appropriately tailored set of standards, practices, and controls, such as a tailoring process included in a DOE approved Safety Management System implemented under the clause entitled "Integration of Environment, Safety, and Health into Work Planning and Execution." When such a process is used, the set of tailored (ES&H) requirements, as approved by DOE pursuant to the process, shall be incorporated into List B as contract requirements with full force and effect. These requirements

shall supersede, in whole or in part, the contractual environmental, safety, and health requirements previously made applicable to the contract by List B. If the tailored set of requirements identifies an alternative requirement varying from an ES&H requirement of an applicable law or regulation, the contractor shall request an exemption or other appropriate regulatory relief specified in the regulation.

- (d) Except as otherwise directed by the contracting officer, the contractor shall procure all necessary permits or licenses required for the performance of work under this contract.
- (e) Regardless of the performer of the work, the contractor is responsible for compliance with the requirements of this clause. The contractor is responsible for flowing down the requirements of this clause to subcontracts at any tier to the extent necessary to ensure the contractor's compliance with the requirements.

I.30. DEAR 970.5204-3 ACCESS TO AND OWNERSHIP OF RECORDS (DEC 2000)

- (a) Government-owned records. Except as provided in paragraph (b) of this clause, all records acquired or generated by the contractor in its performance of this contract shall be the property of the Government and shall be delivered to the Government or otherwise disposed of by the contractor either as the contracting officer may from time to time direct during the progress of the work or, in any event, as the contracting officer shall direct upon completion or termination of the contract.
- (b) Contractor-owned records. The following records are considered the property of the contractor and are not within the scope of paragraph (a) of this clause. [The contracting officer shall identify which of the following categories of records will be included in the clause.]
 - (1) Employment-related records (such as workers' compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns, and other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel and medical/ health-related records and similar files), and non-employee patient medical/health related records, except for those records described by the contract as being maintained in Privacy Act systems of records.
 - (2) Confidential contractor financial information, and correspondence between the contractor and other segments of the contractor located away from the DOE facility (i.e., the contractor's corporate headquarters);

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- (3) Records relating to any procurement action by the contractor, except for records that under 48 CFR 970.5232-3, Accounts, Records, and Inspection, are described as the property of the Government; and
- (4) Legal records, including legal opinions, litigation files, and documents covered by the attorney-client and attorney work product privileges; and
- (5) The following categories of records maintained pursuant to the technology transfer clause of this contract:
 - (i) Executed license agreements, including exhibits or appendices containing information on royalties, royalty rates, other financial information, or commercialization plans, and all related documents, notes and correspondence.
 - (ii) The contractor's protected Cooperative Research and Development Agreement (CRADA) information and appendices to a CRADA that contain licensing terms and conditions, or royalty or royalty rate information.
 - (iii) Patent, copyright, mask work, and trademark application files and related contractor invention disclosures, documents and correspondence, where the contractor has elected rights or has permission to assert rights and has not relinquished such rights or turned such rights over to the Government.
- (c) Contract completion or termination. In the event of completion or termination of this contract, copies of any of the contractor-owned records identified in paragraph (b) of this clause, upon the request of the Government, shall be delivered to DOE or its designees, including successor contractors. Upon delivery, title to such records shall vest in DOE or its designees, and such records shall be protected in accordance with applicable federal laws (including the Privacy Act), as appropriate.
- (d) Inspection, copying, and audit of records. All records acquired or generated by the contractor under this contract in the possession of the contractor, including those described at paragraph (b) of this clause, shall be subject to inspection, copying, and audit by the Government or its designees at all reasonable times, and the contractor shall afford the Government or its designees reasonable facilities for such inspection, copying, and audit; provided, however, that upon request by the contracting officer, the contractor shall deliver such records to a location specified by the contracting officer for inspection, copying, and audit. The Government or

its designees shall use such records in accordance with applicable federal laws (including the Privacy Act), as appropriate.

- (e) Applicability. Paragraphs (b), (c), and (d) of this clause apply to all records without regard to the date or origination of such records.
- (f) Records retention standards. Special records retention standards, described at DOE Order 200.1, Information Management Program (version in effect on effective date of contract), are applicable for the classes of records described therein, whether or not the records are owned by the Government or the contractor. In addition, the contractor shall retain individual radiation exposure records generated in the performance of work under this contract until DOE authorizes disposal. The Government may waive application of these record retention schedules, if, upon termination or completion of the contract, the Government exercises its right under paragraph (c) of this clause to obtain copies and delivery of records described in paragraphs (a) and (b) of this clause.
- (g) Subcontracts. The contractor shall include the requirements of this clause in all subcontracts that are of a cost-reimbursement type if any of the following factors is present:
 - (1) The value of the subcontract is greater than \$2 million (unless specifically waived by the contracting officer);
 - (2) The contracting officer determines that the subcontract is, or involves, a critical task related to the contract; or
 - (3) The subcontract includes 48 CFR 970.5223-1, Integration of Environment, Safety, and Health into Work Planning and Execution, or similar clause.

I.31. DEAR 970.5208-1 PRINTING (DEC 2000)

- (a) To the extent that duplicating or printing services may be required in the performance of this contract, the Contractor shall provide or secure such services in accordance with the Government Printing and Binding Regulations, Title 44 of the U.S. Code, and DOE Directives relative thereto.
- (b) The term "Printing" includes the following processes: Composition, platemaking, presswork, binding, microform publishing, or the end items produced by such processes. Provided, however, that performance of a requirement under this contract involving the duplication of less than 5,000 copies of a single page, or no more than 25,000 units in the aggregate of multiple pages, will not be deemed to be printing.

- (c) Printing services not obtained in compliance with this guidance shall result in the cost of such printing being disallowed.
- (d) The Contractor shall include the substance of this clause in all subcontracts hereunder which require printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations).

I.32. DEAR 970.5215-1 TOTAL AVAILABLE FEE: BASE FEE AMOUNT AND PERFORMANCE FEE AMOUNT (DEC 2000) ALTERNATES II & III (DEC 2000)

- (a) Total available fee. Total available fee, consisting of a base fee amount (which may be zero) and a performance fee amount (consisting of an incentive fee component for objective performance requirements, an award fee component for subjective performance requirements, or both) determined in accordance with the provisions of this clause, is available for payment in accordance with the clause of this contract entitled, "Payments and advances."
- (b) Fee Negotiations. Prior to the beginning of each fiscal year under this contract, or other appropriate period as mutually agreed upon and, if exceeding one year, approved by the Senior Procurement Executive, or designee, the contracting officer and Contractor shall enter into negotiation of the requirements for the year or appropriate period, including the evaluation areas and individual requirements subject to incentives, the total available fee, and the allocation of fee. The contracting officer shall modify this contract at the conclusion of each negotiation to reflect the negotiated requirements, evaluation areas and individual requirements subject to incentives, the total available fee, and the allocation of fee. In the event the parties fail to agree on the requirements, the evaluation areas and individual requirements subject to incentives, the total available fee, or the allocation of fee, a unilateral determination will be made by the contracting officer. The total available fee amount shall be allocated to a twelve month cycle composed of one or more evaluation periods, or such longer period as may be mutually agreed to between the parties and approved by the Senior Procurement Executive, or designee.
- (c) Determination of Total Available Fee Amount Earned.
 - (1) The Government shall, at the conclusion of each specified evaluation period, evaluate the contractor's performance of all requirements, including performance based incentives completed during the period, and determine the total available fee amount earned. At the contracting officer's discretion, evaluation of incentivized performance may occur at the scheduled completion of specific incentivized requirements.

- (2) The Chief Operating Officer (COO) will be the Fee Determination Official (FDO). The contractor agrees that the determination as to the total available fee earned is a unilateral determination made by the COO.
 - (3) The evaluation of contractor performance shall be in accordance with the Performance Evaluation and Measurement Plan(s) described in subparagraph (d) of this clause unless otherwise set forth in the contract. The Contractor shall be promptly advised in writing of the fee determination, and the basis of the fee determination. In the event that the contractor's performance is considered to be less than the level of performance set forth in the Statement of Work, as amended to include the current Work Authorization Directive or similar document, for any contract requirement, it will be considered by the COO, who may at his/her discretion adjust the fee determination to reflect such performance. Any such adjustment shall be in accordance with the clause entitled, "Conditional Payment of Fee, Profit, or Incentives" if contained in the contract.
 - (4) At the sole discretion of the Government, unearned total available fee amounts may be carried over from one evaluation period to the next, so long as the periods are within the same award fee cycle. (Alternate I (DEC 2000))
- (d) Performance Evaluation and Measurement Plan(s). To the extent not set forth elsewhere in the contract:
- (1) The Government shall establish a Performance Evaluation and Measurement Plan(s) upon which the determination of the total available fee amount earned shall be based. The Performance Evaluation and Measurement Plan(s) will address all of the requirements of contract performance specified in the contract directly or by reference. A copy of the Performance Evaluation and Measurement Plan(s) shall be provided to the Contractor:
 - (i) prior to the start of an evaluation period if the requirements, evaluation areas, specific incentives, amount of fee, and allocation of fee to such evaluation areas and specific incentives have been mutually agreed to by the parties; or
 - (ii) not later than thirty days prior to the scheduled start date of the evaluation period, if the requirements, evaluation areas, specific incentives, amount of fee, and allocation of fee to such evaluation

areas and specific incentives have been unilaterally established by the contracting officer.

- (2) The Performance Evaluation and Measurement Plan(s) will set forth the criteria upon which the Contractor will be evaluated relating to any technical, schedule, management, and/or cost objectives selected for evaluation. Such criteria should be objective, but may also include subjective criteria. The Plan(s) shall also set forth the method by which the total available fee amount will be allocated and the amount earned determined.
- (3) The Performance Evaluation and Measurement Plan(s) may, consistent with the contract statement of work, be revised during the period of performance. The contracting officer shall notify the contractor:
 - (i) of such unilateral changes at least ninety calendar days prior to the end of the affected evaluation period and at least thirty calendar days prior to the effective date of the change;
 - (ii) of such bilateral changes at least sixty calendar days prior to the end of the affected evaluation period; or
 - (iii) if such change, whether unilateral or bilateral, is urgent and high priority, at least thirty calendar days prior to the end of the evaluation period.
- (e) Schedule for total available fee amount earned determinations. The Chief Operating Officer shall issue the final total available fee amount earned determination in accordance with: the schedule set forth in the Performance Evaluation and Measurement Plan(s); or as otherwise set forth in this contract. However, a determination must be made within sixty calendar days after the receipt by the contracting officer of the Contractor's self-assessment, if one is required or permitted by paragraph (f) of this clause, or seventy calendar days after the end of the evaluation period, whichever is later, or a longer period if the Contractor and contracting officer agree. If the contracting officer evaluates the Contractor's performance of specific requirements on their completion, the payment of any earned fee amount must be made within seventy calendar days (or such other time period as mutually agreed to between the contracting officer and the Contractor) after such completion. If the determination is delayed beyond that date, the Contractor shall be entitled to interest on the determined total available fee amount earned at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (*41 U.S.C. 611*) that is in effect on the payment date. This rate is referred to as the "Renegotiation Board Interest

Rate," and is published in the Federal Register semiannually on or about January 1 and July 1. The interest on any late total available fee amount earned determination will accrue daily and be compounded in 30-day increments inclusive from the first day after the schedule determination date through the actual date the determination is issued. That is, interest accrued at the end of any 30-day period will be added to the determined amount of fee earned and be subject to interest if not paid in the succeeding 30-day period.

- (f) Contractor self-assessment. Following each evaluation period, the Contractor shall submit a self-assessment within 10 working days after the end of the period. This self-assessment shall address both the strengths and weaknesses of the Contractor's performance during the evaluation period. Where deficiencies in performance are noted, the Contractor shall describe the actions planned or taken to correct such deficiencies and avoid their recurrence. The Chief Operating Officer, will review the Contractor's self-assessment, if submitted, as part of its independent evaluation of the contractor's management during the period. A self-assessment, in and of itself may not be the only basis for the award fee determination. [Alternate III (DEC 2000)]

I.33. DEAR 970-5215-2 MAKE-OR-BUY PLAN (DEC 2000)

- (a) Definitions.

Buy item means a work activity, supply, or service to be produced or performed by an outside source, including a subcontractor or an affiliate, subsidiary, or division of the contractor.

Make item means a work activity, supply, or service to be produced or performed by the contractor using its personnel and other resources at the Department of Energy facility or site.

Make-or-buy plan means a contractor's written program for the contract that identifies work efforts or requirements that either are "make items" or "buy items."

- (b) Make-or-buy plan. The contractor shall develop and implement a make-or-buy plan that establishes a preference for providing supplies and services on a least-cost basis, subject to any specific make or buy criteria identified in the contract or otherwise provided by the contracting officer. In developing and implementing its make-or-buy plan, the contractor agrees to assess subcontracting opportunities and implement subcontracting decisions in accordance with the following:

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- (1) The contractor shall conduct internal productivity improvement and cost-reduction programs so that in-house performance options can be made more efficient and cost-effective.
 - (2) The contractor shall consider subcontracting opportunities with the maximum practicable regard for open communications with potentially affected employees and their representatives. Similarly, a contractor shall communicate its plans, activities, cost-benefit analyses, and decisions to those stakeholders, including representatives of the community and local businesses, likely to be affected by such actions.
- (c) Submission and approval. For new contract awards, the contractor shall submit an initial make-or-buy plan, for approval, within 180 days after contract award. If the existing contract is to be extended, the contractor shall submit a make-or-buy plan for review and approval at least 90 days prior to the commencement of the negotiations for the extension. The following documentation shall be prepared and submitted:
- (1) A description of the each work item, and if appropriate, the identification of the associated Work Authorization or Work Breakdown Structure element;
 - (2) The categorization of each work item as "must make," "must buy," or "can make or buy," with the reasons for such categorization in consideration of the program specific make or buy criteria (including least cost considerations). For non-core capabilities categorized as "must make," a cost/benefit analysis must be performed for each item if:
 - (i) The contractor is not the least-cost performer, and
 - (ii) A program specific make-or-buy criterion does not otherwise justify a "must make" categorization;
 - (3) A decision to either "make" or "buy" in consideration of the program specific make or buy criteria (including least cost considerations) for work effort categorized as "can make or buy";
 - (4) Identification of potential suppliers and subcontractors, if known, and their location and size status;
 - (5) A recommendation to defer a make or buy decision where categorization of an identifiable work effort is impracticable at the time of initial development of the plan and a schedule for future re-evaluation;

- (6) A description of the impact of a change in current practice of making or buying on the existing work force; and
- (7) Any additional information appropriate to support and explain the plan.
- (d) Conduct of operations. Once a make-or-buy plan is approved, the contractor shall perform in accordance with the plan.
- (e) Changes to the make-or-buy plan. The make-or-buy plan established in accordance with paragraph (b) of this clause shall remain in effect for the term of the contract, unless:
 - (1) A lesser period is provided either for the total plan or for individual items or work effort;
 - (2) The circumstances supporting the make-or-buy decisions change, or
 - (3) New work is identified.

At least annually, the contractor shall review its approved make-or-buy plan to ensure that it reflects current conditions. Changes to the approved make-or-buy plan shall be submitted in advance of the effective date of the proposed change in sufficient time to permit evaluation and review. Changes shall be submitted in accordance with the instructions provided by the contracting officer. Modification of the make-or-buy plan to incorporate proposed changes or additions shall be effective upon the contractor's receipt of the contracting officer's written approval.

I.34. DEAR 970.5215-3 CONDITIONAL PAYMENT OF FEE, PROFIT, OR INCENTIVES (DEC 2000) ALTERNATE I (DEC 2000) (DEVIATION)

In order for the Contractor to receive all otherwise earned fee, fixed fee, profit, or share of cost savings under the contract in an evaluation period, the Contractor must meet the minimum requirements in paragraphs (a) and (b) of this clause and if Alternate I is applicable (a) through (d) of this clause. (Deviation) Due to the nature of this contract and the fact there are no evaluation periods, the amount of earned fee, fixed fee, profit, or share of cost savings subject to adjustment under the terms of this clause in any one (or portion of one) of the six month periods running sequentially from the date of award of the contract is \$8,835,002. If the Contractor does not meet the minimum requirements, the Chief Operating Officer (COO) may make a unilateral determination to reduce the evaluation period's otherwise earned fee, fixed fee, profit or share of cost savings as described in the following paragraphs of this clause.

- (a) Minimum requirements for Environment, Safety & Health (ES&H) Program. The Contractor shall develop, obtain DOE approval of, and implement a Safety Management System in accordance with the provisions of the clause entitled, "Integration of Environment, Safety and Health into Work Planning and Execution," if included in the contract, or as otherwise agreed to with the contracting officer. The minimum performance requirements of the system will be set forth in the approved Safety Management System, or similar document. If the Contractor fails to obtain approval of the Safety Management System or fails to achieve the minimum performance requirements of the system during the evaluation period, the COO, at his/her sole discretion, may reduce any otherwise earned fees, fixed fee, profit or share of cost savings for the evaluation period by an amount up to the amount earned.
- (b) Minimum requirements for catastrophic event. If, in the performance of this contract, there is a catastrophic event (such as a fatality, or a serious workplace-related injury or illness to one or more Federal, contractor, or subcontractor employees or the general public, loss of control over classified or special nuclear material, or significant damage to the environment), the COO may reduce any otherwise earned fee for the evaluation period by an amount up to the amount earned. In determining any diminution of fee, fixed fee, profit, or share of cost savings resulting from a catastrophic event, the COO will consider whether willful misconduct and/or negligence contributed to the occurrence and will take into consideration any mitigating circumstances presented by the contractor or other sources.
- (c) Minimum requirements for specified level of performance.
 - (1) At a minimum the Contractor must perform the following:
 - (i) the requirements with specific incentives at the level of performance set forth in the Statement of Work, Work Authorization Directive, or similar document unless an otherwise minimal level of performance has been established in the specific incentive;
 - (ii) all of the performance requirements directly related to requirements specifically incentivized at a level of performance such that the overall performance of these related requirements is at an acceptable level; and
 - (iii) all other requirements at a level of performance such that the total performance of the contract is not jeopardized.

- (2) The evaluation of the Contractor's achievement of the level of performance shall be unilaterally determined by the contracting officer. To the extent that the Contractor fails to achieve the minimum performance levels specified in the Statement of Work, Work Authorization Directive, or similar document, during the evaluation period, the COO, may reduce any otherwise earned fee, fixed fee, profit, or shared net savings for the evaluation period. Such reduction shall not result in the total of earned fee, fixed fee, profit, or shared net savings being less than 25% of the total available fee amount. Such 25% shall include base fee, if any.
- (d) Minimum requirements for cost performance.
 - (1) Requirements incentivized by other than cost incentives must be performed within their specified cost constraint and must not adversely impact the costs of performing unrelated activities.
 - (2) The performance of requirements with a specific cost incentive must not adversely impact the costs of performing unrelated requirements.
 - (3) The Contractor's performance within the stipulated cost performance levels for the evaluation period shall be determined by the contracting officer. To the extent the Contractor fails to achieve the stipulated cost performance levels, the COO, at his/her sole discretion, may reduce in whole or in part any otherwise earned fee, fixed fee, profit, or shared net savings for the evaluation period. Such reduction shall not result in the total of earned fee, fixed fee, profit or shared net savings being less than 25% of the total available fee amount. Such 25% shall include base fee, if any.

I.35. DEAR 970.5215-4 COST REDUCTION (DEC 2000)

- (a) General. It is the Department of Energy's (DOE's) intent to have its facilities and laboratories operated in an efficient and effective manner. To this end, the Contractor shall assess its operations and identify areas where cost reductions would bring cost efficiency to operations without adversely affecting the level of performance required by the contract. The Contractor, to the maximum extent practical, shall identify areas where cost reductions may be effected, and develop and submit Cost Reduction Proposals (CRPs) to the contracting officer. If accepted, the Contractor may share in any shared net savings from accepted CRPs in accordance with paragraph (g) of this clause.
- (b) Definitions. Administrative cost is the contractor cost of developing and administering the CRP.

Design, process, or method change is a change to a design, process, or method which has established cost, technical and schedule baseline, is defined, and is subject to a formal control procedure. Such a change must be innovative, initiated by the contractor, and applied to a specific project or program.

Development cost is the Contractor cost of up-front planning, engineering, prototyping, and testing of a design, process, or method.

DOE cost is the Government cost incurred implementing and validating the CRP.

Implementation cost is the Contractor cost of tooling, facilities, documentation, etc., required to effect a design, process, or method change once it has been tested and approved.

Net Savings means a reduction in the total amount (to include all related costs and fee) of performing the effort where the savings revert to DOE control and may be available for deobligation. Such savings may result from a specific cost reduction effort which is negotiated on a cost-plus-incentive-fee, fixed-price incentive, or firm-fixed-price basis, or may result directly from a design, process, or method change. They may also be savings resulting from formal or informal direction given by DOE or from changes in the mission, work scope, or routine reorganization of the Contractor due to changes in the budget.

Shared Net Savings are those net savings which result from:

- (1) a specific cost reduction effort which is negotiated on a cost-plus-incentive-fee or fixed-price incentive basis, and is the difference between the negotiated target cost of performing an effort as negotiated and the actual allowable cost of performing that effort; or
- (2) a design, process, or method change, which occurs in the fiscal year in which the change is accepted and the subsequent fiscal year, and is the difference between the estimated cost of performing an effort as originally planned and the actual allowable cost of performing that same effort utilizing a revised plan intended to reduce costs along with any Contractor development costs, implementation costs, administrative costs, and DOE costs associated with the revised plan. Administrative costs and DOE costs are only included at the discretion of the contracting officer. Savings resulting from formal or informal direction given by the DOE or changes in the mission, work scope, or routine reorganization of the Contractor due to changes in the budget are not to be considered as shared net savings for purposes of this clause and do not qualify for incentive sharing.

- (c) Procedure for submission of CRPs.
 - (1) CRPs for the establishment of cost-plus-incentive-fee, fixed-price incentive, or firm-fixed-price efforts or for design, process, or methods changes submitted by the Contractor shall contain, at a minimum, the following:
 - (i) Current Method (Baseline)-A verifiable description of the current scope of work, cost, and schedule to be impacted by the initiative, and supporting documentation.
 - (ii) New Method (New Proposed Baseline)-A verifiable description of the new scope of work, cost, and schedule, how the initiative will be accomplished, and supporting documentation.
 - (iii) Feasibility Assessment-A description and evaluation of the proposed initiative and benefits, risks, and impacts of implementation. This evaluation shall include an assessment of the difference between the current method (baseline) and proposed new method including all related costs.
 - (2) In addition, CRPs for the establishment of cost-plus-incentive-fee, fixed-price incentive, or firm-fixed-price efforts shall contain, at a minimum, the following:
 - (i) The proposed contractual arrangement and the justification for its use; and
 - (ii) A detailed cost/price estimate and supporting rationale. If the approach is proposed on an incentive basis, minimum and maximum cost estimates should be included along with any proposed sharing arrangements.
- (d) Evaluation and Decision. All CRPs must be submitted to and approved by the contracting officer. Included in the information provided by the CRP must be a discussion of the extent the proposed cost reduction effort may:
 - (1) Pose a risk to the health and safety of workers, the community, or to the environment;
 - (2) Result in a waiver or deviation from DOE requirements, such as DOE Orders and joint oversight agreements;

- (3) Require a change in other contractual agreements;
 - (4) Result in significant organizational and personnel impacts;
 - (5) Create a negative impact on the cost, schedule, or scope of work in another area;
 - (6) Pose a potential negative impact on the credibility of the Contractor or the DOE; and
 - (7) Impact successful and timely completion of any of the work in the cost, technical, and schedule baseline.
- (e) Acceptance or Rejection of CRPs. Acceptance or rejection of a CRP is a unilateral determination made by the contracting officer. The contracting officer will notify the Contractor that a CRP has been accepted, rejected, or deferred within (TBD) days of receipt. The only CRPs that will be considered for acceptance are those which the Contractor can demonstrate, at a minimum, will:
- (1) Result in net savings (in the sharing period if a design, process, or method change);
 - (2) Not reappear as costs in subsequent periods; and
 - (3) Not result in any impairment of essential functions.
- (f) The failure of the contracting officer to notify the Contractor of the acceptance, rejection, or deferral of a CRP within the specified time shall not be construed as approval.
- (g) Adjustment to Original Estimated Cost and Fee. If a CRP is established on a cost-plus-incentive-fee, fixed-price incentive or firm-fixed-price basis, the originally estimated cost and fee for the total effort shall be adjusted to remove the estimated cost and fee amount associated with the CRP effort.
- (h) Sharing Arrangement. If a CRP is accepted, the Contractor may share in the shared net savings. For a CRP negotiated on a cost-plus-incentive-fee or fixed-price incentive basis, with the specific incentive arrangement (negotiated target costs, target fees, share lines, ceilings, profit, etc.) set forth in the contractual document authorizing the effort, the Contractor's share shall be the actual fee or profit resulting from such an arrangement. For a CRP negotiated as a cost savings incentive resulting from a design, process, or method change, the Contractor's

share shall be a percentage, not to exceed 25% of the shared net savings. The specific percentage and sharing period shall be set forth in the contractual document.

- (i) Validation of Shared Net Savings. The contracting officer shall validate actual shared net savings. If actual shared net savings cannot be validated, the contractor will not be entitled to a share of the net shared savings.
- (j) Relationship to Other Incentives. Only those benefits of an accepted CRP not rewardable under other clauses of this contract shall be rewarded under this clause.
- (k) Subcontracts. The Contractor may include a clause similar to this clause in any subcontract. In calculating any estimated shared net savings in a CRP under this contract, the Contractor's administration, development, and implementation costs shall include any subcontractor's allowable costs, and any CRP incentive payments to a subcontractor resulting from the acceptance of such CRP. The Contractor may choose any arrangement for subcontractor CRP incentive payments, provided that the payments not reduce the DOE's share of shared net savings.

**I.36. DEAR 970.5222-1 COLLECTIVE BARGAINING AGREEMENTS -
MANAGEMENT AND OPERATING CONTRACTS (DEC 2000)**

When negotiating collective bargaining agreements applicable to the work force under this contract, the Contractor shall use its best efforts to ensure such agreements contain provisions designed to assure continuity of services. All such agreements entered into during the contract period of performance should provide that grievances and disputes involving the interpretation or application of the agreement will be settled without resorting to strike, lockout, or other interruption of normal operations. For this purpose, each collective bargaining agreement should provide an effective grievance procedure with arbitration as its final step, unless the parties mutually agree upon some other method of assuring continuity of operations. As part of such agreements, management and labor should agree to cooperate fully with the Federal Mediation and Conciliation Service. The contractor shall include the substance of this clause in any subcontracts for protective services or other services performed on the DOE-owned site which will affect the continuity of operation of the facility.

I.37. DEAR 970.5222-2 OVERTIME MANAGEMENT (DEC 2000)

- (a) The contractor shall maintain adequate internal controls to ensure that employee overtime is authorized only if cost effective and necessary to ensure performance of work under this contract.
- (b) The contractor shall notify the contracting officer when in any given year it is likely that overtime usage as a percentage of payroll may exceed 4%.
- (c) The contracting officer may require the submission, for approval, of a formal annual overtime control plan whenever contractor overtime usage as a percentage of payroll has exceeded, or is likely to exceed, 4%, or if the contracting officer otherwise deems overtime expenditures excessive. The plan shall include, at a minimum:
 - (1) An overtime premium fund (maximum dollar amount);
 - (2) Specific controls for casual overtime for non-exempt employees;
 - (3) Specific parameters for allowability of exempt overtime;
 - (4) An evaluation of alternatives to the use of overtime; and
 - (5) Submission of a semi-annual report that includes for exempt and non-exempt employees:
 - (i) Total cost of overtime;
 - (ii) Total cost of straight time;
 - (iii) Overtime cost as a percentage of straight-time cost;
 - (iv) Total overtime hours;
 - (v) Total straight-time hours; and
 - (vi) Overtime hours as a percentage of straight-time hours.

I.38. DEAR 970.5223-1 INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION (DEC 2000)

- (a) For the purposes of this clause,

- (1) Safety encompasses environment, safety and health, including pollution prevention and waste minimization; and
 - (2) Employees include subcontractor employees.
- (b) In performing work under this contract, the contractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The contractor shall exercise a degree of care commensurate with the work and the associated hazards. The contractor shall ensure that management of environment, safety and health (ES&H) functions and activities becomes an integral but visible part of the contractor's work planning and execution processes. The contractor shall, in the performance of work, ensure that:
- (1) Line management is responsible for the protection of employees, the public, and the environment. Line management includes those contractor and subcontractor employees managing or supervising employees performing work.
 - (2) Clear and unambiguous lines of authority and responsibility for ensuring (ES&H) are established and maintained at all organizational levels.
 - (3) Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.
 - (4) Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.
 - (5) Before work is performed, the associated hazards are evaluated and an agreed-upon set of ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.
 - (6) Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be on designing the work and/or controls to reduce or eliminate the hazards and to prevent accidents and unplanned releases and exposures.
 - (7) The conditions and requirements to be satisfied for operations to be initiated and conducted are established and agreed-upon by DOE and the

contractor. These agreed-upon conditions and requirements are requirements of the contract and binding upon the contractor. The extent of documentation and level of authority for agreement shall be tailored to the complexity and hazards associated with the work and shall be established in a Safety Management System.

- (c) The contractor shall manage and perform work in accordance with a documented Safety Management System (System) that fulfills all conditions in paragraph (b) of this clause at a minimum. Documentation of the System shall describe how the contractor will:
 - (1) Define the scope of work;
 - (2) Identify and analyze hazards associated with the work;
 - (3) Develop and implement hazard controls;
 - (4) Perform work within controls; and
 - (5) Provide feedback on adequacy of controls and continue to improve safety management.
- (d) The System shall describe how the contractor will establish, document, and implement safety performance objectives, performance measures, and commitments in response to DOE program and budget execution guidance while maintaining the integrity of the System. The System shall also describe how the contractor will measure system effectiveness.
- (e) The contractor shall submit to the contracting officer documentation of its System for review and approval. Dates for submittal, discussions, and revisions to the System will be established by the contracting officer. Guidance on the preparation, content, review, and approval of the System will be provided by the contracting officer. On an annual basis, the contractor shall review and update, for DOE approval, its safety performance objectives, performance measures, and commitments consistent with and in response to DOE's program and budget execution guidance and direction. Resources shall be identified and allocated to meet the safety objectives and performance commitments as well as maintain the integrity of the entire System. Accordingly, the System shall be integrated with the contractor's business processes for work planning, budgeting, authorization, execution, and change control.
- (f) The contractor shall comply with, and assist the Department of Energy in complying with, ES&H requirements of all applicable laws and regulations, and

applicable directives identified in the clause of this contract entitled "Laws, Regulations, and DOE Directives." The contractor shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this contract.

- (g) The contractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements and the System. If the contractor fails to provide resolution or if, at any time, the contractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the contracting officer may issue an order stopping work in whole or in part. Any stop work order issued by a contracting officer under this clause (or issued by the contractor to a subcontractor in accordance with paragraph (i) of this clause) shall be without prejudice to any other legal or contractual rights of the Government. In the event that the contracting officer issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the contracting officer. The contractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.
- (h) Regardless of the performer of the work, the contractor is responsible for compliance with the ES&H requirements applicable to this contract. The contractor is responsible for flowing down the ES&H requirements applicable to this contract to subcontracts at any tier to the extent necessary to ensure the contractor's compliance with the requirements.
- (i) The contractor shall include a clause substantially the same as this clause in subcontracts involving complex or hazardous work on site at a DOE-owned or-leased facility. Such subcontracts shall provide for the right to stop work under the conditions described in paragraph (g) of this clause. Depending on the complexity and hazards associated with the work, the contractor may choose not to require the subcontractor to submit a Safety Management System for the contractor's review and approval.

I.39. DEAR 970.5223-2 ACQUISITION AND USE OF ENVIRONMENTALLY PREFERABLE PRODUCTS AND SERVICES (DEC 2000)

- (a) In the performance of this contract, the Contractor shall comply with the requirements of the following issuances:
 - (1) Executive Order 13101 of September 14, 1998, entitled "Greening the Government Through Waste Prevention, Recycling and Federal Acquisition."

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- (2) Section 6002 of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended (42 U.S.C. 6962, Pub. L. 94-580, 90 Stat. 2822),
 - (3) Title 40 of the Code of Federal Regulations, Subchapter I, Part 247 (Comprehensive Guidelines for the Procurement of Products Containing Recovered Materials) and such other Subchapter I Parts or Comprehensive Procurement Guidelines as the Environmental Protection Agency may issue from time to time as guidelines for the procurement of products that contain recovered/recycled materials,
 - (4) "U.S. Department of Energy Affirmative Procurement Program for Products Containing Recovered Materials" and related guidance document(s), as they are identified in writing by the Department.
- (b) The Contractor shall prepare and submit reports on matters related to the use of environmentally preferable products and services from time to time in accordance with written direction (e.g., in a specified format) from the contracting officer.
- (c) In complying with the requirements of paragraph (a) of this clause, the Contractor shall coordinate its concerns and seek implementing guidance on Federal and Departmental policy, plans, and program guidance with the DOE recycling point of contact, who shall be identified by the contracting officer. Reports required pursuant to paragraph (b) of this clause, shall be submitted through the DOE recycling point of contact.

I.40. DEAR 970.5223-4 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2000)

- (a) Program Implementation. The contractor shall, consistent with 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, incorporated herein by reference with full force and effect, develop, implement, and maintain a workplace substance abuse program.
- (b) Remedies. In addition to any other remedies available to the Government, the contractor's failure to comply with the requirements of 10 CFR part 707 or to perform in a manner consistent with its approved program may render the contractor subject to: the suspension of contract payments, or, where applicable, a reduction in award fee; termination for default; and suspension or debarment.
- (c) Subcontracts.
 - (1) The contractor agrees to notify the contracting officer reasonably in advance of, but not later than 30 days prior to, the award of any

subcontract the contractor believes may be subject to the requirements of 10 CFR part 707.

- (2) The DOE prime contractor shall require all subcontracts subject to the provisions of 10 CFR part 707 to agree to develop and implement a workplace substance abuse program that complies with the requirements of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, as a condition for award of the subcontract. The DOE prime contractor shall review and approve each subcontractor's program, and shall periodically monitor each subcontractor's implementation of the program for effectiveness and compliance with 10 CFR part 707.
- (3) The contractor agrees to include, and require the inclusion of, the requirements of this clause in all subcontracts, at any tier, that are subject to the provisions of 10 CFR part 707.

I.41. DEAR 970.5226-1 DIVERSITY PLAN (DEC 2000)

The Contractor shall submit a Diversity Plan to the contracting officer for approval within 90 days after the effective date of this contract (or contract modification, if appropriate). The contractor shall submit an update to its Plan annually or with its annual fee proposal. Guidance for preparation of a Diversity Plan is provided in **Section J, Appendix H**. The Plan shall include innovative strategies for increasing opportunities to fully use the talents and capabilities of a diverse work force. The Plan shall address, at a minimum, the Contractor's approach for promoting diversity through (1) the Contractor's work force, (2) educational outreach, (3) community involvement and outreach, (4) subcontracting, (5) economic development (including technology transfer), and (6) the prevention of profiling based on race or national origin.

I.42. DEAR 970.5226-3 COMMUNITY COMMITMENTS (DEC 2000)

It is the policy of the DOE to be a constructive partner in the geographic region in which DOE conducts its business. The basic elements of this policy include: (1) Recognizing the diverse interests of the region and its stakeholders, (2) engaging regional stakeholders in issues and concerns of mutual interest, and (3) recognizing that giving back to the community is a worthwhile business practice. Accordingly, the Contractor agrees that its business operations and performance under the Contract will be consistent with the intent of the policy and elements set forth above.

I.43. DEAR 970.5227-1 RIGHTS IN DATA-FACILITIES (DEC 2000)

(a) Definitions.

- (1) Computer data bases, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.
- (2) Computer software, as used in this clause, means
 - (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and
 - (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.
- (3) Data, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term "data" does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.
- (4) Limited rights data, as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of subparagraph (e) of this clause.
- (5) Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of paragraph (f) of this clause.
- (6) Technical data, as used in this clause, means recorded data, regardless of form or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and

instructional materials and technical data formatted as a computer data base.

- (7) Unlimited rights, as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.

(b) Allocation of Rights.

- (1) The Government shall have:
- (i) Ownership of all technical data and computer software first produced in the performance of this Contract;
 - (ii) Unlimited rights in technical data and computer software specifically used in the performance of this Contract, except as provided herein regarding copyright, limited rights data, or restricted computer software, or except for other data specifically protected by statute for a period of time or, where, approved by DOE, appropriate instances of the DOE Work for Others Program;
 - (iii) The right to inspect technical data and computer software first produced or specifically used in the performance of this Contract at all reasonable times. The Contractor shall make available all necessary facilities to allow DOE personnel to perform such inspection;
 - (iv) The right to have all technical data and computer software first produced or specifically used in the performance of this Contract delivered to the Government or otherwise disposed of by the Contractor, either as the contracting officer may from time to time direct during the progress of the work or in any event as the contracting officer shall direct upon completion or termination of this Contract. The Contractor agrees to leave a copy of such data at the facility or plant to which such data relate, and to make available for access or to deliver to the Government such data upon request by the contracting officer. If such data are limited rights data or restricted computer software, the rights of the Government in such data shall be governed solely by the provisions of paragraph (e) of this clause ("Rights in Limited Rights Data") or

paragraph (f) of this clause ("Rights in Restricted Computer Software"); and

- (v) The right to remove, cancel, correct, or ignore any markings not authorized by the terms of this Contract on any data furnished hereunder if, in response to a written inquiry by DOE concerning the propriety of the markings, the Contractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case DOE will notify the Contractor of the action taken.

(2) The Contractor shall have:

- (i) The right to withhold limited rights data and restricted computer software unless otherwise provided in accordance with the provisions of this clause; and
- (ii) The right to use for its private purposes, subject to patent, security or other provisions of this Contract, data it first produces in the performance of this Contract, except for data in DOE's Uranium Enrichment Technology, including diffusion, centrifuge, and atomic vapor laser isotope separation, provided the data requirements of this Contract have been met as of the date of the private use of such data.

- (3) The Contractor agrees that for limited rights data or restricted computer software or other technical, business or financial data in the form of recorded information which it receives from, or is given access to by, DOE or a third party, including a DOE Contractor or subcontractor, and for technical data or computer software it first produces under this Contract which is authorized to be marked by DOE, the Contractor shall treat such data in accordance with any restrictive legend contained thereon.

(c) Copyrighted Material.

- (1) The Contractor shall not, without prior written authorization of the Patent Counsel, assert copyright in any technical data or computer software first produced in the performance of this contract. To the extent such authorization is granted, the Government reserves for itself and others acting on its behalf, a nonexclusive, paid-up, irrevocable, world-wide license for Governmental purposes to publish, distribute, translate, duplicate, exhibit, and perform any such data copyrighted by the Contractor.

- (2) The Contractor agrees not to include in the technical data or computer software delivered under the contract any material copyrighted by the Contractor and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (c)(1) of this clause. If the Contractor believes that such copyrighted material for which the license cannot be obtained must be included in the technical data or computer software to be delivered, rather than merely incorporated therein by reference, the Contractor shall obtain the written authorization of the contracting officer to include such material in the technical data or computer software prior to its delivery.
- (d) Subcontracting.
 - (1) Unless otherwise directed by the contracting officer, the Contractor agrees to use in subcontracts in which technical data or computer software is expected to be produced or in subcontracts for supplies that contain a requirement for production or delivery of data in accordance with the policy and procedures of 48 CFR Subpart 27.4 as supplemented by 48 CFR 927.401 through 927.409, the clause entitled, "Rights in Data-General" at 48 CFR 52.227-14 modified in accordance with 927.409(a) and including Alternate V. Alternates II through IV of that clause may be included as appropriate with the prior approval of DOE Patent Counsel, and the Contractor shall not acquire rights in a subcontractor's limited rights data or restricted computer software, except through the use of Alternates II or III, respectively, without the prior approval of DOE Patent Counsel. The clause at 48 CFR 52.227-16, Additional Data Requirements, shall be included in subcontracts in accordance with DEAR 927.409(h). The contractor shall use instead the Rights in Data-Facilities clause at 48 CFR 970.5227-1 in subcontracts, including subcontracts for related support services, involving the design or operation of any plants or facilities or specially designed equipment for such plants or facilities that are managed or operated under its contract with DOE.
 - (2) It is the responsibility of the Contractor to obtain from its subcontractors technical data and computer software and rights therein, on behalf of the Government, necessary to fulfill the Contractor's obligations to the Government with respect to such data. In the event of refusal by a subcontractor to accept a clause affording the Government such rights, the Contractor shall:

- (i) Promptly submit written notice to the contracting officer setting forth reasons or the subcontractor's refusal and other pertinent information which may expedite disposition of the matter, and
 - (ii) Not proceed with the subcontract without the written authorization of the contracting officer.
- (3) Neither the Contractor nor higher-tier subcontractors shall use their power to award subcontracts as economic leverage to acquire rights in a subcontractor's limited rights data or restricted computer software for their private use.
- (e) Rights in Limited Rights Data. Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license by or for the Government, in any limited rights data of the Contractor specifically used in the performance of this Contract, provided, however, that to the extent that any limited rights data when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Limited Rights Notice" set forth. All such limited rights data shall be marked with the following "Limited Rights Notice":

Limited Rights Notice

These data contain "limited rights data," furnished under Contract No.----- with the United States Department of Energy which may be duplicated and used by the Government with the express limitations that the "limited rights data" may not be disclosed outside the Government or be used for purposes of manufacture without prior permission of the Contractor, except that further disclosure or use may be made solely for the following purposes:

- (a) Use (except for manufacture) by support services contractors within the scope of their contracts;
- (b) This "limited rights data" may be disclosed for evaluation purposes under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;
- (c) This "limited rights data" may be disclosed to other contractors participating in the Government's program of which this Contract is a part for information or use (except for manufacture) in connection with the work performed under their

contracts and under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;

- (d) This "limited rights data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "limited rights data" be retained in confidence and not be further disclosed; and
- (e) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government. This Notice shall be marked on any reproduction of this data in whole or in part.

(End of Notice)

- (f) Rights in Restricted Computer Software.
 - (1) Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up, license by or for the Government, in any restricted computer software of the Contractor specifically used in the performance of this Contract, provided, however, that to the extent that any restricted computer software when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Restricted Rights Notice" set forth below. All such restricted computer software shall be marked with the following "Restricted Rights Notice":

Restricted Rights Notice-Long Form

- (a) This computer software is submitted with restricted rights under Department of Energy Contract No.----- . It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this notice.
- (b) This computer software may be:
 - (1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;
 - (2) Used, copied for use, in a backup or replacement computer if any computer for which it was acquired is inoperative or is replaced;

- (3) Reproduced for safekeeping (archives) or backup purposes;
 - (4) Modified, adapted, or combined with other computer software, provided that only the portions of the derivative software consisting of the restricted computer software are to be made subject to the same restricted rights; and
 - (5) Disclosed to and reproduced for use by contractors under a service contract (of the type defined in 48 CFR 37.101) in accordance with subparagraphs (b)(1) through (4) of this Notice, provided the Government makes such disclosure or reproduction subject to these restricted rights.
- (c) Notwithstanding the foregoing, if this computer software has been published under copyright, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in the restricted rights notice above.
- (d) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of Notice)

- (2) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used.

Restricted Rights Notice-Short Form

Use, reproduction, or disclosure is subject to restrictions set forth in the Long Form Notice of DOE Contract No.----- with (name of Contractor).

(End of Notice)

- (3) If the software is embedded, or if it is commercially impractical to mark it with human readable text, then the symbol R and the clause date (mo/yr), in brackets or a box, a [R-mo/yr], may be used. This will be read to mean restricted computer software, subject to the rights of the Government as described in the Long Form Notice, in effect as of the date indicated next to the symbol. The symbol shall not be used to mark human readable material. In the event this Contract contains any variation to the rights in the Long Form Notice, then the contract number must also be cited.
- (4) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, the software will be presumed to be published copyrighted

computer software licensed to the Government without disclosure prohibitions and with unlimited rights, unless the Contractor includes the following statement with such copyright notice "Unpublished-rights reserved under the Copyright Laws of the United States."

- (g) Relationship to patents. Nothing contained in this clause creates or is intended to imply a license to the Government in any patent or is intended to be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

I.44. DEAR 970.5227-4 AUTHORIZATION AND CONSENT (DEC 2000)

- (a) The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this contract or any subcontract at any tier.
- (b) If the Contractor is sued for copyright infringement or anticipates the filing of such a lawsuit, the Contractor may request authorization and consent to copy a copyrighted work from the contracting officer. Programmatic necessity is a major consideration for DOE in determining whether to grant such request.
- (c) The Contractor agrees to include, and require inclusion of, the Authorization and Consent clause at 52.227-1, without Alternate 1, but suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed \$25,000).
- (d) The Contractor agrees to include, and require inclusion of, paragraph (a) of this Authorization and Consent clause, suitably modified to identify the parties, in all subcontracts at any tier for research and development activities. Omission of an authorization and consent clause from any subcontract, including those valued less than \$25,000 does not affect this authorization and consent.

I.45. DEAR 970.5227-5 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2000)

- (a) The Contractor shall report to the Contracting Officer promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.
- (b) If any person files a claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed

hereunder, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Except where the Contractor has agreed to indemnify the Government, the Contractor shall furnish such evidence and information at the expense of the Government.

- (c) The Contractor agrees to include, and require inclusion of, this clause suitably modified to identify the parties, in all subcontracts at any tier expected to exceed \$25,000.

I.46. DEAR 970.5227-6 PATENT INDEMNITY-SUBCONTRACTS - (DEC 2000)

Except as otherwise authorized by the Contracting Officer, the Contractor shall obtain indemnification of the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a secrecy order by the Government) from Contractor's subcontractors for any contract work subcontracted in accordance with FAR 48 CFR 52.227-3.

I.47. DEAR 970.5227-8 REFUND OF ROYALTIES - (DEC 2000) (DEVIATION)

- (a) The contract price includes certain amounts for royalties, payable by the Contractor or subcontractors or both, reported to the Contracting Officer in accordance with the Royalty Information provision of the solicitation.
- (b) During performance of this contract, if any additional royalty payments are proposed to be charged to the Government as costs under the contract that were not included in the original contract price, the Contractor agrees to submit for approval of the Contracting Officer prior to the execution of any licensing agreement the following information relating to each separate item of royalty or license fee:
 - (1) Name and address of licensor;
 - (2) Date of license agreement;
 - (3) Patent numbers, patent application serial numbers, or other basis on which the royalty is payable;
 - (4) Brief description, including any part or model numbers of each contract item or component on which the royalty is payable;
 - (5) Percentage or dollar rate of royalty per unit;

- (6) Unit price of contract item;
 - (7) Number of units; and
 - (8) Total dollar amount of royalties.
 - (9) In addition, if specifically requested by the Contracting Officer, the contractor shall furnish a copy of the current license agreement and an identification of applicable claims of specific patents.
- (c) The term "royalties" as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications in connection with performing this contract or any subcontract hereunder. The term also includes any costs or charges associated with the access to, use of, or other right pertaining to data that is represented to be proprietary and is related to the performance of this contract or subcontracts, or the copying of such data or data that is copyrighted.
- (d) The Contractor shall furnish to the Contracting Officer, before final payment under this contract, a statement of royalties paid or required to be paid in connection with performing this contract and subcontracts hereunder.
- (e) The Contractor is compensated for any royalties reported under paragraph (b) of this clause only to the extent that such royalties were included in the contract price and are determined by the Contracting Officer to be properly chargeable to the Government and allocable to the contract.
- (f) The Contracting Officer shall reduce the contract price to the extent any royalties that are included in the contract price are not, in fact, paid by the Contractor or are determined by the Contracting Officer not to be properly chargeable to the Government and allocable to the contract. The Contractor agrees to repay or credit the Government accordingly, as the Contracting Officer directs. Regardless of prior DOE approval of any individual payments or royalties, DOE may contest at any time the enforceability, validity, scope of, or title to, a patent or the proprietary nature of data pursuant to which DOE makes a royalty or other payment.
- (g) If at any time within 3 years after final payment under this contract, the Contractor for any reason is relieved in whole or in part from the payment of the royalties included in the final contract price as adjusted pursuant to paragraph (f) of this clause, the Contractor shall promptly notify the Contracting Office of that fact and shall promptly reimburse the Government in a corresponding amount.

- (h) The Contractor agrees to include, and require inclusion of, this clause, including this paragraph (h), suitably modified to identify the parties in any subcontract at any tier in which the amount of royalties reported during negotiation of the subcontract exceeds \$250.

I.48. DEAR 970.5227-11 PATENT RIGHTS-MANAGEMENT AND OPERATING CONTRACTS, FOR-PROFIT CONTRACTOR, NON-TECHNOLOGY TRANSFER (DEC 2000)

(a) Definitions.

- (1) DOE licensing regulations means the Department of Energy patent licensing regulations at 10 CFR Part 781.
- (2) DOE patent waiver regulations means the Department of Energy patent waiver regulations at 10 CFR Part 784.
- (3) Invention means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).
- (4) Made when used in relation to any invention means the conception or first actual reduction to practice of such invention.
- (5) Patent Counsel means DOE Patent Counsel assisting the contracting activity.
- (6) Practical application means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.
- (7) Subject Invention means any invention of the contractor conceived or first actually reduced to practice in the course of or under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) shall also occur during the period of contract performance.

(b) Allocation of Principal Rights.

- (1) Assignment to the Government. Except to the extent that rights are retained by the Contractor by a determination of greater rights in accordance with subparagraph (b)(2) of this clause or by a request for foreign patent rights in accordance with subparagraph (d)(2) of this clause, the Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention.
 - (2) Greater rights determinations. The Contractor, or an Contractor employee-inventor after consultation with the Contractor and with the written authorization of the Contractor in accordance with DOE patent waiver regulations, may request greater rights, including title, in an identified subject invention than the nonexclusive license and the foreign patent rights provided for in paragraph (d) of this clause, in accordance with the DOE patent waiver regulations. Such a request shall be submitted in writing to Patent Counsel with a copy to the Contracting Officer at the time the subject invention is first disclosed to DOE in accordance with subparagraph (c)(2) of this clause, or not later than eight (8) months after such disclosure, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. DOE may grant or refuse to grant such a request by the Contractor or Contractor employee-inventor. Unless otherwise provided in the greater rights determination, any rights in a subject invention obtained by the Contractor pursuant to a determination of greater rights are subject to a nonexclusive, nontransferable, irrevocable, paid-up license to the Government to practice or have practiced the subject invention throughout the world by or on behalf of the Government of the United States (including any Government agency), and to any reservations and conditions deemed appropriate by the Secretary of Energy or designee.
- (c) Subject Invention Disclosures.
- (1) Contractor procedures for reporting subject inventions to Contractor personnel. Subject inventions shall be reported to Contractor personnel responsible for patent matters within six (6) months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. Accordingly, the Contractor shall establish and maintain effective procedures for ensuring such prompt identification and timely disclosure of subject inventions to Contractor personnel responsible for patent matters, and the procedures shall include the maintenance of laboratory notebooks, or equivalent records, and other records that are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and the

maintenance of records demonstrating compliance with such procedures. The Contractor shall submit a written description of such procedures to the Contracting Officer, upon request, for evaluation of the effectiveness of such procedures by the Contracting Officer.

- (2) Subject invention disclosure. The Contractor shall disclose each subject invention to Patent Counsel with a copy to the Contracting Officer within two (2) months after the subject invention is reported to Contractor personnel responsible for patent matters, in accordance with subparagraph (c)(1) of this clause, or, if earlier, within six (6) months after the Contractor has knowledge of the subject invention, but in any event before any on sale, public use, or publication of the subject invention. The disclosure to DOE shall be in the form of a written report and shall include:
- (i) the contract number under which the subject invention was made;
 - (ii) the inventor(s) of the subject invention;
 - (iii) a description of the subject invention in sufficient technical detail to convey a clear understanding of the nature, purpose and operation of the subject invention, and of the physical, chemical, biological or electrical characteristics of the subject invention, to the extent known by the Contractor at the time of the disclosure;
 - (iv) the date and identification of any publication, on sale or public use of the invention;
 - (v) the date and identification of any submissions for publication of any manuscripts describing the invention, and a statement of whether the manuscript is accepted for publication, to the extent known by the Contractor at the time of the disclosure;
 - (vi) a statement indicating whether the subject invention concerns exceptional circumstances pursuant to *35 U.S.C. 202(ii)*, related to national security, or subject to a treaty or an international agreement, to the extent known or believed by Contractor at the time of the disclosure;
 - (vii) all sources of funding by Budget and Resources (B&R) code; and
 - (viii) the identification of any agreement relating to the subject invention, including Cooperative Research and Development

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Agreements and Work-for-Others agreements. Unless the Contractor contends otherwise in writing at the time the invention is disclosed, inventions disclosed to DOE under this paragraph are deemed made in the manner specified in Sections (a)(1) and (a)(2) of 42 U.S.C. 5908.

- (3) Publication after disclosure. After disclosure of the subject invention to the DOE, the Contractor shall promptly notify Patent Counsel of the acceptance for publication of any manuscript describing the subject invention or of any expected or on sale or public use of the subject invention, known by the Contractor.
 - (4) Contractor employee agreements. The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to Contractor personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor, each subject invention made under this contract, and to execute all papers necessary to file patent applications claiming subject inventions or to establish the Government's rights in the subject inventions. This disclosure format shall at a minimum include the information required by subparagraph (c)(2) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.
 - (5) Contractor procedures for reporting subject inventions to DOE. The Contractor agrees to establish and maintain effective procedures for ensuring the prompt identification and timely disclosure of subject inventions to DOE. The Contractor shall submit a written description of such procedures to the Contracting Officer, upon request, for evaluation of the effectiveness of such procedures by the Contracting Officer.
 - (6) Duplication and disclosure of documents. The Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause; provided, however, that any such duplication or disclosure by the Government is subject to 35 U.S.C. 205 and 37 CFR 401.13.
- (d) Minimum Rights of the Contractor.
- (1) Contractor License.

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- (i) Request for a Contractor license. Except for subject inventions that the Contractor fails to disclose within the time periods specified at subparagraph (c) of this clause, the Contractor may request a revocable, nonexclusive, royalty-free license in each patent application filed in any country claiming a subject invention and any resulting patent in which the Government obtains title, and DOE may grant or refuse to grant such a request by the Contractor. If DOE grants the Contractor's request for a license, the Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded.
- (ii) Transfer of a Contractor license. DOE shall approve any transfer of the Contractor's license in a subject invention, and DOE may determine the Contractor's license is non-transferrable, on a case-by-case basis.
- (iii) Revocation or modification of a Contractor license. DOE may revoke or modify the Contractor's domestic license to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in 37 CFR Part 404 and DOE licensing regulations. DOE may not revoke the Contractor's domestic license in that field of use or the geographical areas in which the Contractor, its licensee, or its domestic subsidiaries or affiliates achieved practical applications and continues to make the benefits of the invention reasonably accessible to the public. DOE may revoke or modify the Contractor's license in any foreign country to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates failed to achieve practical application in that foreign country.
- (iv) Notice of revocation or modification of a Contractor license. Before revocation or modification of the license, DOE shall furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor shall be allowed thirty (30) days from the date of the notice (or such other time as may be authorized by DOE for good cause shown by the Contractor) to show cause why the license should not be revoked or modified. The Contractor has the right to appeal any decision concerning the revocation or modification of its license, in accordance with

applicable regulations in 37 CFR Part 404 and DOE licensing regulations.

- (2) Contractor's right to request foreign patent rights. If the Government has title to a subject invention and the Government decides against securing patent rights in a foreign country for the subject invention, the Contractor may request such foreign patent rights from DOE, and DOE may grant the Contractor's request, subject to a nonexclusive, nontransferable, irrevocable, paid-up license to the Government to practice or have practiced the subject invention in the foreign country, and any reservations and conditions deemed appropriate by the Secretary of Energy or designee. Such a request shall be submitted in writing to the Patent Counsel as part of the disclosure required by subparagraph (c)(2) of this clause, with a copy to the DOE Contracting Officer, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. DOE may grant or refuse to grant such a request, and may consider whether granting the Contractor's request best serves the interests of the United States.
- (e) Examination of Records Relating to Inventions.
- (1) Contractor compliance. Until the expiration of three (3) years after final payment under this contract, the Contracting Officer or any authorized representative may examine any books (including laboratory notebooks), records, and documents and other supporting data of the Contractor, which the Contracting Officer or authorized representative deems reasonably pertinent to the discovery or identification of subject inventions, or to determine Contractor (and inventor) compliance with the requirements of this clause, including proper identification and disclosure of subject inventions, and establishment and maintenance of invention disclosure procedures.
 - (2) Unreported inventions. If the Contracting Officer is aware of an invention that is not disclosed by the Contractor to DOE, and the Contracting Officer believes the unreported invention may be a subject invention, DOE may require the Contractor to submit to DOE a disclosure of the invention for a determination of ownership rights.
 - (3) Confidentiality. Any examination of records under this paragraph is subject to appropriate conditions to protect the confidentiality of the information involved.
- (f) Subcontracts.

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- (1) Subcontractor subject inventions. The Contractor shall not obtain rights in the subcontractor's subject inventions as part of the consideration for awarding a subcontract.
- (2) Inclusion of patent rights clause-non-profit organization or small business firm subcontractors. Unless otherwise authorized or directed by the Contracting Officer, the Contractor shall include the patent rights clause at 48 CFR 952.227-11, suitably modified to identify the parties in all subcontracts, at any tier, for experimental, developmental, demonstration or research work to be performed by a small business firm or domestic nonprofit organization, except subcontracts which are subject to exceptional circumstances in accordance with 35 U.S.C. 202(a)(ii).
- (3) Inclusion of patent rights clause-subcontractors other than non-profit organizations and small business firms. Except for the subcontracts described in subparagraph (f)(2) of this clause, the Contractor shall include the patent rights clause at 48 CFR 952.227-13, suitably modified to identify the parties, in any contract for experimental, developmental, demonstration or research work.
- (4) DOE and subcontractor contract. With respect to subcontracts at any tier, DOE, the subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to those matters covered by this clause.
- (5) Subcontractor refusal to accept terms of patent rights clause. If a prospective subcontractor refuses to accept the terms of a patent rights clause, the Contractor shall promptly submit a written notice to the Contracting Officer stating the subcontractor's reasons for such a refusal, including any relevant information for expediting disposition of the matter, and the Contractor shall not proceed with the subcontract without the written authorization of the Contracting Officer.
- (6) Notification of award of subcontract. Upon the award of any subcontract at any tier containing a patent rights clause, the Contractor shall promptly notify the Contracting Officer in writing and identify the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of a subcontract.

request of the Contracting Officer, the Contractor shall furnish a copy of a subcontract.

- (7) Identification of subcontractor subject inventions. If the Contractor in the performance of this contract becomes aware of a subject invention made under a subcontract, the Contractor shall promptly notify Patent Counsel and identify the subject invention, with a copy of the notification and identification to the Contracting Officer.
- (g) Atomic Energy.
 - (1) Pecuniary awards. No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, may be asserted with respect to any invention or discovery made or conceived in the course of or under this contract.
 - (2) Patent Agreements. Except as otherwise authorized in writing by the Contracting Officer, the Contractor shall obtain patent agreements to effectuate the provisions of subparagraph (g)(1) of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel, such as clerical employees and manual laborers.
- (h) Publication. The Contractor shall receive approval from Patent Counsel prior to releasing or publishing information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract, to ensure such release or publication does not adversely affect the patent interests of DOE or the Contractor.
- (i) Communications. The Contractor shall direct any notification, disclosure, or request provided for in this clause to the Patent Counsel assisting the DOE contracting activity, with a copy of the communication to the Contracting Officer.
- (j) Reports.
 - (1) Interim reports. Upon DOE's request, the Contractor shall submit to DOE, no more frequently than annually, a list of subject inventions disclosed to DOE during a specified period, or a statement that no subject inventions were made during the specified period; and/or a list of subcontracts containing a patent clause and awarded by the Contractor during a specified period, or a statement that no such subcontracts were awarded during the specified period. The interim report shall state whether the Contractor's invention disclosures were submitted to DOE in accordance with the requirements of subparagraphs (c)(1) and (c)(5) of this clause.

- (2) Final reports. Upon DOE's request, the Contractor shall submit to DOE, prior to closeout of the contract or within three (3) months of the date of completion of the contracted work, a list of all subject inventions disclosed during the performance period of the contract, or a statement that no subject inventions were made during the contract performance period; and/or a list of all subcontracts containing a patent clause and awarded by the Contractor during the contract performance period, or a statement that no such subcontracts were awarded during the contract performance period.
- (k) Facilities License. In addition to the rights of the parties with respect to inventions or discoveries conceived or first actually reduced to practice in the course of or under this contract, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the contractor at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or products manufactured at the facility
 - (1) to practice or have practiced by or for the Government at the facility, and
 - (2) to transfer such license with the transfer of that facility. Notwithstanding the acceptance or exercise by the Government of these rights, the Government may contest at any time the enforceability, validity or scope of, or title to, any rights or patents herein licensed.
- (l) Classified Inventions.
 - (1) Approval for filing a foreign patent application. The Contractor shall not file or cause to be filed an application or registration for a patent disclosing a subject invention related to classified subject matter in any country other than the United States without first obtaining the written approval of the Contracting Officer.
 - (2) Transmission of classified subject matter. If in accordance with this clause the Contractor files a patent application in the United States disclosing a subject invention that is classified for reasons of security, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter. If the Contractor transmits a patent application disclosing a classified subject invention to the United States Patent and Trademark Office (USPTO), the Contractor shall submit a separate letter

to the USPTO identifying the contract or contracts by agency and agreement number that require security classification markings to be placed on the patent application.

- (3) Inclusion of clause in subcontracts. The Contractor agrees to include the substance of this clause in subcontracts at any tier that cover or are likely to cover subject matter classified for reasons of security.
- (m) Patent Functions. Upon the written request of the Contracting Officer or Patent Counsel, the Contractor agrees to make reasonable efforts to support DOE in accomplishing patent-related functions for work arising out of the contract, including, but not limited to, the prosecution of patent applications, and the determination of questions of novelty, patentability, and inventorship.
- (n) Annual Appraisal by Patent Counsel. Patent Counsel may conduct an annual appraisal to evaluate the Contractor's effectiveness in identifying and protecting subject inventions in accordance with DOE policy.

I.49. DEAR 970.5228-1 INSURANCE, LITIGATION AND CLAIMS (DEC 2000)

- (a) The contractor may, with the prior written authorization of the contracting officer, and shall, upon the request of the Government, initiate litigation against third parties, including proceedings before administrative agencies, in connection with this contract. The contractor shall proceed with such litigation in good faith and as directed from time to time by the contracting officer.
- (b) The contractor shall give the contracting officer immediate notice in writing of any legal proceeding, including any proceeding before an administrative agency, filed against the contractor arising out of the performance of this contract. Except as otherwise directed by the contracting officer, in writing, the contractor shall furnish immediately to the contracting officer copies of all pertinent papers received by the contractor with respect to such action. The contractor, with the prior written authorization of the contracting officer, shall proceed with such litigation in good faith and as directed from time to time by the contracting officer.
- (c)
 - (1) Except as provided in paragraph (c)(2) of this clause, the contractor shall procure and maintain such bonds and insurance as required by law or approved in writing by the contracting officer.
 - (2) The contractor may, with the approval of the contracting officer, maintain a self-insurance program; provided that, with respect to workers' compensation, the contractor is qualified pursuant to statutory authority.

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- (3) All bonds and insurance required by this clause shall be in a form and amount and for those periods as the contracting officer may require or approve and with sureties and insurers approved by the contracting officer.
- (d) The contractor agrees to submit for the contracting officer's approval, to the extent and in the manner required by the contracting officer, any other bonds and insurance that are maintained by the contractor in connection with the performance of this contract and for which the contractor seeks reimbursement. If an insurance cost (whether a premium for commercial insurance or related to self-insurance) includes a portion covering costs made unallowable elsewhere in the contract, and the share of the cost for coverage for the unallowable cost is determinable, the portion of the cost that is otherwise an allowable cost under this contract is reimbursable to the extent determined by the contracting officer.
- (e) Except as provided in subparagraphs (g) and (h) of this clause, or specifically disallowed elsewhere in this contract, the contractor shall be reimbursed-
 - (1) For that portion of the reasonable cost of bonds and insurance allocable to this contract required in accordance with contract terms or approved under this clause, and
 - (2) For liabilities (and reasonable expenses incidental to such liabilities, including litigation costs) to third persons not compensated by insurance or otherwise without regard to and as an exception to the clause of this contract entitled, "Obligation of Funds."
- (f) The Government's liability under paragraph (e) of this clause is subject to the availability of appropriated funds. Nothing in this contract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.
- (g) Notwithstanding any other provision of this contract, the contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities, including litigation costs, counsel fees, judgment and settlements)-
 - (1) Which are otherwise unallowable by law or the provisions of this contract; or
 - (2) For which the contractor has failed to insure or to maintain insurance as required by law, this contract, or by the written direction of the contracting officer.

- (h) In addition to the cost reimbursement limitations contained in 48 CFR Part 31, as supplemented by 48 CFR 970.31, and notwithstanding any other provision of this contract, the contractor's liabilities to third persons, including employees but excluding costs incidental to worker's compensation actions, (and any expenses incidental to such liabilities, including litigation costs, counsel fees, judgments and settlements) shall not be reimbursed if such liabilities were caused by contractor managerial personnel's-
 - (1) Willful misconduct,
 - (2) Lack of good faith, or
 - (3) Failure to exercise prudent business judgment, which means failure to act in the same manner as a prudent person in the conduct of competitive business; or, in the case of a non-profit educational institution, failure to act in the manner that a prudent person would under the circumstances prevailing at the time the decision to incur the cost is made.
- (i) The burden of proof shall be upon the contractor to establish that costs covered by paragraph (h) of this clause are allowable and reasonable if, after an initial review of the facts, the contracting officer challenges a specific cost or informs the contractor that there is reason to believe that the cost results from willful misconduct, lack of good faith, or failure to exercise prudent business judgment by contractor managerial personnel.
- (j)
 - (1) All litigation costs, including counsel fees, judgments and settlements shall be differentiated and accounted for by the contractor so as to be separately identifiable. If the contracting officer provisionally disallows such costs, then the contractor may not use funds advanced by DOE under the contract to finance the litigation.
 - (2) Punitive damages are not allowable unless the act or failure to act which gave rise to the liability resulted from compliance with specific terms and conditions of the contract or written instructions from the contracting officer.
 - (3) The portion of the cost of insurance obtained by the contractor that is allocable to coverage of liabilities referred to in paragraph (g)(1) of this clause is not allowable.
 - (4) The term "contractor's managerial personnel" is defined in clause paragraph (j) of 48 CFR 970.5245-1.

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- (k) The contractor may at its own expense and not as an allowable cost procure for its own protection insurance to compensate the contractor for any unallowable or unreimbursable costs incurred in connection with contract performance.
- (l) If any suit or action is filed or any claim is made against the contractor, the cost and expense of which may be reimbursable to the contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the contractor shall-
 - (1) Immediately notify the contracting officer and promptly furnish copies of all pertinent papers received;
 - (2) Authorize Department representatives to collaborate with: in-house or DOE-approved outside counsel in settling or defending the claim; or counsel for the insurance carrier in settling or defending the claim if the amount of the liability claimed exceeds the amount of coverage, unless precluded by the terms of the insurance contract; and
 - (3) Authorize Department representatives to settle the claim or to defend or represent the contractor in and/or to take charge of any litigation, if required by the Department, if the liability is not insured or covered by bond. In any action against more than one Department contractor, the Department may require the contractor to be represented by common counsel. Counsel for the contractor may, at the contractor's own expense, be associated with the Department representatives in any such claim or litigation.
- (m) Reasonable litigation and other legal expenses are allowable when incurred in accordance with the DOE approved contractor legal management procedures (including cost guidelines) as such procedures may be revised from time to time, and if not otherwise made unallowable by law or the provisions of this contract.

I.50. DEAR 970.5229-1 STATE AND LOCAL TAXES (DEC 2000)

- (a) The contractor agrees to notify the contracting officer of any State or local tax, fee, or charge levied or purported to be levied on or collected from the contractor with respect to the contract work, any transaction thereunder, or property in the custody or control of the contractor and constituting an allowable item of cost if due and payable, but which the contractor has reason to believe, or the contracting officer has advised the contractor, is or may be inapplicable or invalid; and the contractor further agrees to refrain from paying any such tax, fee, or charge unless authorized in writing by the contracting officer. Any State or local tax, fee, or charge paid with the approval of the contracting officer or on the basis of advice

from the contracting officer that such tax, fee, or charge is applicable and valid, and which would otherwise be an allowable item of cost, shall not be disallowed as an item of cost by reason of any subsequent ruling or determination that such tax, fee, or charge was in fact inapplicable or invalid.

- (b) The contractor agrees to take such action as may be required or approved by the contracting officer to cause any State or local tax, fee, or charge which would be an allowable cost to be paid under protest; and to take such action as may be required or approved by the contracting officer to seek recovery of any payments made, including assignment to the Government or its designee of all rights to an abatement or refund thereof, and granting permission for the Government to join with the contractor in any proceedings for the recovery thereof or to sue for recovery in the name of the contractor. If the contracting officer directs the contractor to institute litigation to enjoin the collection of or to recover payment of any such tax, fee, or charge referred to above, or if a claim or suit is filed against the contractor for a tax, fee, or charge it has refrained from paying in accordance with this clause, the procedures and requirements of the clause entitled "Insurance-Litigation and Claims" shall apply and the costs and expenses incurred by the contractor shall be allowable items of costs, as provided in this contract, together with the amount of any judgment rendered against the contractor.
- (c) The Government shall hold the contractor harmless from penalties and interest incurred through compliance with this clause. All recoveries or credits in respect of the foregoing taxes, fees, and charges (including interest) shall inure to and be for the sole benefit of the Government.

I.51. DEAR 970.5231-4 PRE-EXISTING CONDITIONS (DEC 2000)

- (a) The Department of Energy agrees to reimburse the contractor, and the contractor shall not be held responsible, for any liability (including without limitation, a claim involving strict or absolute liability and any civil fine or penalty), expense, or remediation cost, but limited to those of a civil nature, which may be incurred by, imposed on, or asserted against the contractor arising out of any condition, act, or failure to act which occurred before the contractor assumed responsibility on February 12, 2001. To the extent the acts or omissions of the contractor cause or add to any liability, expense or remediation cost resulting from conditions in existence prior to February 12, 2001, the contractor shall be responsible in accordance with the terms and conditions of this contract.
- (b) The obligations of the Department of Energy under this clause are subject to the availability of appropriated funds.

I.52. DEAR 970.5232-1 REDUCTION OR SUSPENSION OF ADVANCE, PARTIAL, OR PROGRESS PAYMENTS (DEC 2000)

- (a) The contracting officer may reduce or suspend further advance, partial, or progress payments to the contractor upon a written determination by the Senior Procurement Executive that substantial evidence exists that the contractor's request for advance, partial, or progress payment is based on fraud.
- (b) The contractor shall be afforded a reasonable opportunity to respond in writing.

I.53. DEAR 970.5232-2 PAYMENTS AND ADVANCES (DEC 2000) (MODIFIED)

- (a) Installments of fixed-fee. The fixed-fee payable under this contract shall become due and payable upon completion of the specific performance based incentives defined in Section B of this contract. Fixed-fee payments shall be made by direct payment or withdrawn from funds advanced or available under this contract, as determined by the contracting officer. The contracting officer may offset against any such fee payment the amounts owed to the Government by the contractor, including any amounts owed for disallowed costs under this contract. No fixed-fee payment may be withdrawn against the payments cleared financing arrangement without prior written approval of the contracting officer.
- (b) Payments on Account of Allowable Costs. The contracting officer and the contractor shall agree as to the extent to which payment for allowable costs or payments for other items specifically approved in writing by the contracting officer (for example, negotiated fixed amounts) shall be made from advances of Government funds. When pension contributions are paid by the contractor to the retirement fund less frequently than quarterly, accrued costs therefor shall be excluded from costs for payment purposes until such costs are paid. If pension contribution are paid on a quarterly or more frequent basis, accrual therefor may be included in costs for payment purposes, provided that they are paid to the fund within 30 days after the close of the period covered. If payments are not made to the fund within such 30-day period, pension contribution costs shall be excluded from cost for payment purposes until payment has been made.
- (c) Special financial institution account-use. All advances of Government funds shall be withdrawn pursuant to a payments cleared financing arrangement prescribed by DOE in favor of the financial institution or, at the option of the Government, shall be made by direct payment or other payment mechanism to the contractor, and shall be deposited only in the special financial institution account referred to in the Special Financial Institution Account Agreement, which is incorporated into this contract as Appendix-B. No part of the funds in the special financial institution account shall be commingled with any funds of the contractor or used

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for a purpose other than that of making payments for costs allowable and, if applicable, fees earned under this contract, negotiated fixed amounts, or payments for other items specifically approved in writing by the contracting officer. If the contracting officer determines that the balance of such special financial institution account exceeds the contractor's current needs, the contractor shall promptly make such disposition of the excess as the contracting officer may direct.

- (d) Title to funds advanced. Title to the unexpended balance of any funds advanced and of any special financial institution account established pursuant to this clause shall remain in the Government and be superior to any claim or lien of the financial institution of deposit or others. It is understood that an advance to the contractor hereunder is not a loan to the contractor, and will not require the payment of interest by the contractor, and that the contractor acquires no right, title or interest in or to such advance other than the right to make expenditures therefrom, as provided in this clause.
- (e) Financial settlement. The Government shall promptly pay to the contractor the unpaid balance of allowable costs (or other items specifically approved in writing by the contracting officer) and fee upon termination of the work, expiration of the term of the contract, or completion of the work and its acceptance by the Government after:
 - (1) Compliance by the contractor with DOE's patent clearance requirements, and
 - (2) The furnishing by the contractor of:
 - (i) An assignment of the contractor's rights to any refunds, rebates, allowances, accounts receivable, collections accruing to the contractor in connection with the work under this contract, or other credits applicable to allowable costs under the contract;
 - (ii) A closing financial statement;
 - (iii) The accounting for Government-owned property required by the clause entitled "Property"; and
 - (iv) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract subject only to the following exceptions:

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- (A) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible to exact statement by the contractor;
 - (B) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the contractor to third parties arising out of the performance of this contract; provided that such claims are not known to the contractor on the date of the execution of the release; and provided further that the contractor gives notice of such claims in writing to the contracting officer promptly, but not more than one (1) year after the contractor's right of action first accrues. In addition, the contractor shall provide prompt notice to the contracting officer of all potential claims under this clause, whether in litigation or not (see also Contract Clause--, DEAR 970.5228-1, "Insurance-Litigation and Claims");
 - (C) Claims for reimbursement of costs (other than expenses of the contractor by reason of any indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the contractor under the provisions of this contract relating to patents; and
 - (D) Claims recognizable under the clause entitled, Nuclear Hazards Indemnity Agreement.
- (3) In arriving at the amount due the contractor under this clause, there shall be deducted,
- (i) Any claim which the Government may have against the contractor in connection with this contract, and
 - (ii) Deductions due under the terms of this contract, and not otherwise recovered by or credited to the Government. The unliquidated balance of the special financial institution account may be applied to the amount due and any balance shall be returned to the Government forthwith.
- (f) Claims. Claims for credit against funds advanced for payment shall be accompanied by such supporting documents and justification as the contracting officer shall prescribe.

- (g) Discounts. The contractor shall take and afford the Government the advantage of all known and available cash and trade discounts, rebates, allowances, credits, salvage, and commissions unless the contracting officer finds that action is not in the best interest of the Government.
- (h) Collections. All collections accruing to the contractor in connection with the work under this contract, except for the contractor's fee and royalties or other income accruing to the contractor from technology transfer activities in accordance with this contract, shall be Government property and shall be processed and accounted for in accordance with applicable requirements imposed by the contracting officer pursuant to the Laws, regulations, and DOE directives clause of this contract and, to the extent consistent with those requirements, shall be deposited in the special financial institution account or otherwise made available for payment of allowable costs under this contract, unless otherwise directed by the contracting officer.
- (i) Direct payment of charges. The Government reserves the right, upon ten days written notice from the contracting officer to the contractor, to pay directly to the persons concerned, all amounts due which otherwise would be allowable under this contract. Any payment so made shall discharge the Government of all liability to the contractor therefor.
- (j) Determining allowable costs. The contracting officer shall determine allowable costs in accordance with the Federal **Acquisition Regulation** subpart 31.2 and the Department of Energy **Acquisition Regulation** subpart 48 CFR 970.31 in effect on the date of this contract and other provisions of this contract.

Alternate I (DEC 2000). As prescribed in 48 CFR 970.3270(a)(1)(i), if a separate fixed-fee is provided for a separate item of work, paragraph (a) of the basic clause should be modified to permit payment of the entire fixed-fee upon completion of that item.

- (k) Review and approval of costs incurred. The contractor shall prepare and submit annually as of September 30, a "Statement of Costs Incurred and Claimed" (Cost Statement) for the total of net expenditures accrued (i.e., net costs incurred) for the period covered by the Cost Statement. The contractor shall certify the Cost Statement subject to the penalty provisions for unallowable costs as stated in sections 306(b) and (i) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 256), as amended. DOE, after audit and appropriate adjustment, will approve such Cost Statement. This approval by DOE will constitute an acknowledgment by DOE that the net costs incurred are allowable under the contract and that they have been recorded in the accounts maintained by the contractor in accordance with DOE accounting policies, but will not relieve the contractor of responsibility for DOE's assets in its care, for appropriate subsequent

adjustments, or for errors later becoming known to DOE. [Alternate III (DEC 2000)]

I.54. DEAR 970.5232-3 ACCOUNTS, RECORDS, AND INSPECTION (DEC 2000)

- (a) Accounts. The contractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting: all allowable costs incurred; collections accruing to the contractor in connection with the work under this contract, other applicable credits, negotiated fixed amounts, and fee accruals under this contract; and the receipt, use, and disposition of all Government property coming into the possession of the contractor under this contract. The system of accounts employed by the contractor shall be satisfactory to DOE and in accordance with generally accepted accounting principles consistently applied.
- (b) Inspection and audit of accounts and records. All books of account and records relating to this contract shall be subject to inspection and audit by DOE or its designees in accordance with the provisions of Clause I.30, Access to and ownership of records, at all reasonable times, before and during the period of retention provided for in paragraph (d) of this clause, and the contractor shall afford DOE proper facilities for such inspection and audit.
- (c) Audit of subcontractors' records. The contractor also agrees, with respect to any subcontracts (including fixed-price or unit-price subcontracts or purchase orders) where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor of any tier, to either conduct an audit of the subcontractor's costs or arrange for such an audit to be performed by the cognizant government audit agency through the contracting officer.
- (d) Disposition of records. Except as agreed upon by the Government and the contractor, all financial and cost reports, books of account and supporting documents, system files, data bases, and other data evidencing costs allowable, collections accruing to the contractor in connection with the work under this contract, other applicable credits, and fee accruals under this contract, shall be the property of the Government, and shall be delivered to the Government or otherwise disposed of by the contractor either as the contracting officer may from time to time direct during the progress of the work or, in any event, as the contracting officer shall direct upon completion or termination of this contract and final audit of accounts hereunder. Except as otherwise provided in this contract, including provisions of Clause I.30, Access to and ownership of records, all other records in the possession of the contractor relating to this contract shall be preserved by the contractor for a period of three years after final payment under

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this contract or otherwise disposed of in such manner as may be agreed upon by the Government and the contractor.

- (e) Reports. The contractor shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning the work under this contract as the contracting officer may from time to time require.
- (f) Inspections. The DOE shall have the right to inspect the work and activities of the contractor under this contract at such time and in such manner as it shall deem appropriate.
- (g) Subcontracts. The contractor further agrees to require the inclusion of provisions similar to those in paragraphs (a) through (g) and paragraph (h) of this clause in all subcontracts (including fixed-price or unit-price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.
- (h) Comptroller General. (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.
- (i) Internal audit.
 - (1) The contractor agrees to conduct an internal audit and examination satisfactory to DOE of the records, operations, expenses, and the transactions with respect to costs claimed to be allowable under this contract annually and at such other times as may be mutually agreed upon. The results of such audit, including the working papers, shall be submitted or made available to the contracting officer. The contractor shall include this paragraph (i) in all cost-reimbursement subcontracts with an estimated cost exceeding \$5 million and expected to run for more than 2 years, and any other cost-reimbursement subcontract determined by the Head of the Contracting Activity. [Alternate II(DEC 2000)]
 - (2) This paragraph may not be construed to require the contractor or subcontractor to create or maintain any record that the contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.
 - (3) Nothing in this contract shall be deemed to preclude an audit by the General Accounting Office of any transaction under this contract.

I.55. DEAR 970.5232-4 OBLIGATION OF FUNDS (DEC 2000)

- (a) Obligation of funds. The amount presently obligated by the Government with respect to this contract is-- dollars (\$--). Such amount may be increased unilaterally by DOE by written notice to the contractor and may be increased or decreased by written agreement of the parties (whether or not by formal modification of this contract). Estimated collections from others for work and services to be performed under this contract are not included in the amount presently obligated. Such collections, to the extent actually received by the contractor, shall be processed and accounted for in accordance with applicable requirements imposed by the contracting officer pursuant to the Laws, regulations, and DOE directives clause of this contract. Nothing in this paragraph is to be construed as authorizing the contractor to exceed limitations stated in financial plans established by DOE and furnished to the contractor from time to time under this contract.
- (b) Limitation on payment by the Government. Except as otherwise provided in this contract and except for costs which may be incurred by the contractor pursuant to the Termination clause of this contract or costs of claims allowable under the contract occurring after completion or termination and not released by the contractor at the time of financial settlement of the contract in accordance with the clause entitled "Payments and Advances," payment by the Government under this contract on account of allowable costs shall not, in the aggregate, exceed the amount obligated with respect to this contract, less the contractor's fee and any negotiated fixed amount. Unless expressly negated in this contract, payment on account of those costs excepted in the preceding sentence which are in excess of the amount obligated with respect to this contract shall be subject to the availability of:
 - (1) collections accruing to the contractor in connection with the work under this contract and processed and accounted for in accordance with applicable requirements imposed by the contracting officer pursuant to the Laws, regulations, and DOE directives clause of this contract, and
 - (2) other funds which DOE may legally use for such purpose, provided DOE will use its best efforts to obtain the appropriation of funds for this purpose if not otherwise available.
- (c) Notices-Contractor excused from further performance. The contractor shall notify DOE in writing whenever the unexpended balance of available funds (including collections available under paragraph (a) of this clause), plus the contractor's best estimate of collections to be received and available during the 90 day period

hereinafter specified, is in the contractor's best judgment sufficient to continue contract operations at the programmed rate for only 90 days and to cover the contractor's unpaid fee and any negotiated fixed amounts, and outstanding encumbrances and liabilities on account of costs allowable under the contract at the end of such period. Whenever the unexpended balance of available funds (including collections available under paragraph (a) of this clause), less the amount of the contractor's fee then earned but not paid and any negotiated fixed amounts, is in the contractor's best judgment sufficient only to liquidate outstanding encumbrances and liabilities on account of costs allowable under this contract, the contractor shall immediately notify DOE and shall make no further encumbrances or expenditures (except to liquidate existing encumbrances and liabilities), and, unless the parties otherwise agree, the contractor shall be excused from further performance (except such performance as may become necessary in connection with termination by the Government) and the performance of all work hereunder will be deemed to have been terminated for the convenience of the Government in accordance with the provisions of the Termination clause of this contract.

- (d) Financial plans; cost and encumbrance limitations. In addition to the limitations provided for elsewhere in this contract, DOE may, through financial plans, such as Approved Funding Programs, or other directives issued to the contractor, establish controls on the costs to be incurred and encumbrances to be made in the performance of the contract work. Such plans and directives may be amended or supplemented from time to time by DOE. The contractor agrees
 - (1) to comply with the specific limitations (ceilings) on costs and encumbrances set forth in such plans and directives,
 - (2) to comply with other requirements of such plans and directives, and
 - (3) to notify DOE promptly, in writing, whenever it has reason to believe that any limitation on costs and encumbrances will be exceeded or substantially underrun.
- (e) Government's right to terminate not affected. The giving of any notice under this clause shall not be construed to waive or impair any right of the Government to terminate the contract under the provisions of the Termination clause of this contract.

I.56. DEAR 970.5232-5 LIABILITY WITH RESPECT TO COST ACCOUNTING STANDARDS (DEC 2000)

- (a) The contractor is not liable to the Government for increased costs or interest resulting from its failure to comply with the clauses of this contract entitled, "Cost Accounting Standards," and "Administration of Cost Accounting Standards," if its failure to comply with the clauses is caused by the contractor's compliance with published DOE financial management policies and procedures or other requirements established by the Department's Chief Financial Officer or Procurement Executive.
- (b) The contractor is not liable to the Government for increased costs or interest resulting from its subcontractors' failure to comply with the clauses at FAR 52.230-2, "Cost Accounting Standards," and FAR 52.230-6, "Administration of Cost Accounting Standards," if the contractor includes in each covered subcontract a clause making the subcontractor liable to the Government for increased costs or interest resulting from the subcontractor's failure to comply with the clauses; and the contractor seeks the subcontract price adjustment and cooperates with the Government in the Government's attempts to recover from the subcontractor.

I.57. DEAR 970.5232-6 WORK FOR OTHERS FUNDING AUTHORIZATION (DEC 2000)

Any uncollectible receivables resulting from the contractor utilizing contractor corporate funding for reimbursable work shall be the responsibility of the contractor, and the United States Government shall have no liability to the contractor for the contractor's uncollected receivables. The contractor is permitted to provide advance payment utilizing contractor corporate funds for reimbursable work to be performed by the contractor for a non-Federal entity in instances where advance payment from that entity is required under the Laws, regulations, and DOE directives clause of this contract and such advance cannot be obtained. The contractor is also permitted to provide advance payment utilizing contractor corporate funds to continue reimbursable work to be performed by the contractor for a Federal entity when the term or the funds on a Federal interagency agreement required under the Laws, regulations, and DOE directives clause of this contract have elapsed. The contractor's utilization of contractor corporate funds does not relieve the contractor of its responsibility to comply with all requirements for Work for Others applicable to this contract.

I.58. DEAR 970.5232-7 FINANCIAL MANAGEMENT SYSTEM (DEC 2000)

The contractor shall maintain and administer a financial management system that is suitable to provide proper accounting in accordance with DOE requirements for assets,

liabilities, collections accruing to the contractor in connection with the work under this contract, expenditures, costs, and encumbrances; permits the preparation of accounts and accurate, reliable financial and statistical reports; and assures that accountability for the assets can be maintained. The contractor shall submit to DOE for written approval an annual plan for new financial management systems and/or subsystems and major enhancements and/or upgrades to the currently existing financial systems and/or subsystems. The contractor shall notify DOE thirty (30) days in advance of any planned implementation of any substantial deviation from this plan and, as requested by the contracting officer, shall submit any such deviation to DOE for written approval before implementation.

I.59. DEAR 970.5232-8 INTEGRATED ACCOUNTING (DEC 2000)

Integrated accounting procedures are required for use under this contract. The contractor's financial management system shall include an integrated accounting system that is linked to DOE's accounts through the use of reciprocal accounts and that has electronic capability to transmit monthly and year-end self-balancing trial balances to the Department's Primary Accounting System for reporting financial activity under this contract in accordance with requirements imposed by the contracting officer pursuant to the Laws, regulations, and DOE directives clause of this contract.

I.60. DEAR 970.5235-1 FEDERALLY FUNDED R&D CENTERS (DEC 2000)

- (a) Pursuant to 48 CFR 35.017-1, this contract constitutes the sponsoring agreement between the Department of Energy and the contractor, which establishes the relationship for the operation of a Department of Energy sponsored Federally Funded Research and Development Center (FFRDC).
- (b) In the operation of this FFRDC, the contractor may be provided access beyond that which is common to the normal contractual relationship, to Government and supplier data, including sensitive and proprietary data, and to Government employees and facilities needed to discharge its responsibilities efficiently and effectively. Because of this special relationship, it is essential that the FFRDC be operated in the public interest with objectivity and independence, be free from organizational conflicts of interest, and have full disclosure of its affairs to the Department of Energy.
- (c) Unless otherwise provided by the contract, the contractor may accept work from a nonsponsor (as defined in 48 CFR 35.017) in accordance with the requirements and limitations of DOE Order 481.1, Work for Others (Non-Department of Energy Funded Work) (see current version).

- (d) As an FFRDC, the contractor shall not use its privileged information or access to government facilities to compete with the private sector. Specific guidance on restricted activities is contained in DOE Order 481.1.

I.61. DEAR 970.5236-1 GOVERNMENT FACILITY SUBCONTRACT APPROVAL (DEC 2000)

Upon request of the contracting officer and acceptance thereof by the contractor, the contractor shall procure, by subcontract, the construction of new facilities or the alteration or repair of Government-owned facilities at the plant. Any subcontract entered into under this paragraph shall be subject to the written approval of the contracting officer and shall contain the provisions relative to labor and wages required by law to be included in contracts for the construction, alteration, and/or repair, including painting and decorating, of a public building or public work.

I.62. DEAR 970.5237-2 FACILITIES MANAGEMENT (DEC 2000)

Copies of DOE Directives referenced herein are available from the contracting officer.

- (a) Site development planning. The Government shall provide to the contractor site development guidance for the facilities and lands for which the contractor is responsible under the terms and conditions of this contract. Based upon this guidance, the contractor shall prepare, and maintain through annual updates, a Long-Range Site Development Plan (Plan) to reflect those actions necessary to keep the development of these facilities current with the needs of the Government and allow the contractor to successfully accomplish the work required under this contract. In developing this Plan, the contractor shall follow the procedural guidance set forth in the applicable DOE Directives in the Life Cycle Facility Operations Series listed elsewhere in this contract. The contractor shall use the Plan to manage and control the development of facilities and lands. All plans and revisions shall be approved by the Government.
- (b) General design criteria. The general design criteria which shall be utilized by the contractor in managing the site for which it is responsible under this contract are those specified in the applicable DOE Directives in the 6430, Design Criteria, series listed elsewhere in this contract. The contractor shall comply with these mandatory, minimally acceptable requirements for all facility designs with regard to any building acquisition, new facility, facility addition or alteration or facility lease undertaken as part of the site development activities of paragraph (a) of this clause. This includes on-site constructed buildings, pre-engineered buildings, plan-fabricated modular buildings, and temporary facilities. For existing facilities, original design criteria apply to the structure in general; however, additions or modifications shall comply with this directive and the associated latest editions of

the references therein. An exception may be granted for off-site office space being leased by the contractor on a temporary basis.

- (c) **Energy management.** The contractor shall manage the facilities for which it is responsible under the terms and conditions of this contract in an energy efficient manner in accordance with the applicable DOE Directives in the Life Cycle Facility Operations Series listed elsewhere in this contract. The contractor shall develop a 10-year energy management plan for each site with annual reviews and revisions. The contractor shall submit an annual report on progress toward achieving the goals of the 10-year plan for each individual site, and an energy conservation analysis report for each new building or building addition project. Any acquisition of utility services by the contractor shall be conducted in accordance with 48 CFR 970.41.
- (d) **Subcontract Requirements.** To the extent the contractor subcontracts performance of any of the responsibilities discussed in this clause, the subcontract shall contain the requirements of this clause relative to the subcontracted responsibilities.

I.63. DEAR 970.5243-1 CHANGES (DEC 2000)

- (a) **Changes and adjustment of fee.** The contracting officer may at any time and without notice to the sureties, if any, issue written directions within the general scope of this contract requiring additional work or directing the omission of, or variation in, work covered by this contract. If any such direction results in a material change in the amount or character of the work described in the "Statement of Work," an equitable adjustment of the fee, if any, shall be made in accordance with the agreement of the parties and the contract shall be modified in writing accordingly. Any claim by the contractor for an adjustment under this clause must be asserted in writing within 30 days from the date of receipt by the contractor of the notification of change; provided, however, that the contracting officer, if it is determined that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. A failure to agree on an equitable adjustment under this clause shall be deemed to be a dispute within the meaning of the clause entitled "Disputes."
- (b) **Work to continue.** Nothing contained in this clause shall excuse the contractor from proceeding with the prosecution of the work in accordance with the requirements of any direction hereunder.

I.64. DEAR 970.5244-1 CONTRACTOR PURCHASING SYSTEM (DEC 2000)

- (a) **General.** The contractor shall develop, implement, and maintain formal policies, practices, and procedures to be used in the award of subcontracts consistent with

this clause and 48 CFR 970.44. The contractor's purchasing system and methods shall be fully documented, consistently applied, and acceptable to DOE in accordance with 48 CFR 970.4401-1. The contractor shall maintain file documentation which is appropriate to the value of the purchase and is adequate to establish the propriety of the transaction and the price paid. The contractor's purchasing performance will be evaluated against such performance criteria and measures as may be set forth elsewhere in this contract. DOE reserves the right at any time to require that the contractor submit for approval any or all purchases under this contract. The contractor shall not purchase any item or service the purchase of which is expressly prohibited by the written direction of DOE and shall use such special and directed sources as may be expressly required by the DOE contracting officer. DOE will conduct periodic appraisals of the contractor's management of all facets of the purchasing function, including the contractor's compliance with its approved system and methods. Such appraisals will be performed through the conduct of Contractor Purchasing System Reviews in accordance with 48 CFR subpart 44.3, or, when approved by the contracting officer, through the contractor's participation in the conduct of the Balanced Scorecard performance measurement and performance management system. The contractor's approved purchasing system and methods shall include the requirements set forth in paragraphs (b) through (x) of this clause.

- (b) Acquisition of utility services. Utility services shall be acquired in accordance with the requirements of 48 CFR 970.41.
- (c) Acquisition of Real Property. Real property shall be acquired in accordance with 48 CFR Subpart 917.74.
- (d) Advance Notice of Proposed Subcontract Awards. Advance notice shall be provided in accordance with 48 CFR 970.4401-3.
- (e) Audit of Subcontractors.
 - (1) The contractor shall provide for:
 - (i) periodic post-award audit of cost-reimbursement subcontractors at all tiers, and
 - (ii) audits, where necessary, to provide a valid basis for pre-award or cost or price analysis.
 - (2) Responsibility for determining the costs allowable under each cost-reimbursement subcontract remains with the contractor or next higher-tier subcontractor. The contractor shall provide, in appropriate cases, for the

timely involvement of the contractor and the DOE contracting officer in resolution of subcontract cost allowability.

- (3) Where audits of subcontractors at any tier are required, arrangements may be made to have the cognizant Federal agency perform the audit of the subcontract. These arrangements shall be made administratively between DOE and the other agency involved and shall provide for the cognizant agency to audit in an appropriate manner in light of the magnitude and nature of the subcontract. In no case, however, shall these arrangements preclude determination by the DOE contracting officer of the allowability or unallowability of subcontractor costs claimed for reimbursement by the contractor.
 - (4) Allowable costs for cost reimbursable subcontracts are to be determined in accordance with the cost principles of 48 CFR Part 31, appropriate for the type of organization to which the subcontract is to be awarded, as supplemented by 48 CFR Part 931. Allowable costs in the purchase or transfer from contractor-affiliated sources shall be determined in accordance with 48 CFR 970.4402-3 and 48 CFR 970.3102-3-21(b).
- (f) Bonds and Insurance.
- (1) The contractor shall require performance bonds in penal amounts as set forth in 48 CFR 28.102-2(a) for all fixed priced and unit-priced construction subcontracts in excess of \$100,000. The contractor shall consider the use of performance bonds in fixed price nonconstruction subcontracts, where appropriate.
 - (2) For fixed-price, unit-priced and cost reimbursement construction subcontracts in excess of \$100,000 a payment bond shall be obtained on Standard Form 25A modified to name the contractor as well as the United States of America as obligees. The penal amounts shall be determined in accordance with 48 CFR 28.102-2(b).
 - (3) For fixed-price, unit-priced and cost-reimbursement construction subcontracts, greater than \$25,000, but not greater than \$100,000, the contractor shall select two or more of the payment protections at 48 CFR 28.102-1(b), giving particular consideration to the inclusion of an irrevocable letter of credit as one of the selected alternatives.
 - (4) A subcontractor may have more than one acceptable surety in both construction and other subcontracts, provided that in no case will the liability of any one surety exceed the maximum penal sum for which it is

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qualified for any one obligation. For subcontracts other than construction, a co-surety (two or more sureties together) may reinsure amounts in excess of their individual capacity, with each surety having the required underwriting capacity that appears on the list of acceptable corporate sureties.

- (g) Buy American. The contractor shall comply with the provisions of the Buy American Act as reflected in 48 CFR 52.225-3 and 48 CFR 52.225-5. The contractor shall forward determinations of nonavailability of individual items to the DOE contracting officer for approval. Items in excess of \$100,000 require the prior concurrence of the Head of Contracting Activity. If, however, the contractor has an approved purchasing system, the Head of the Contracting Activity may authorize the contractor to make determinations of nonavailability for individual items valued at \$100,000 or less.
- (h) Construction and Architect-Engineer Subcontracts.
 - (1) Independent Estimates. A detailed, independent estimate of costs shall be prepared for all construction work to be subcontracted.
 - (2) Specifications. Specifications for construction shall be prepared in accordance with the DOE publication entitled "General Design Criteria Manual."
 - (3) Prevention of Conflict of Interest.
 - (i) The contractor shall not award a subcontract for construction to the architect-engineer firm or an affiliate that prepared the design. This prohibition does not preclude the award of a "turnkey" subcontract so long as the subcontractor assumes all liability for defects in design and construction and consequential damages.
 - (ii) The contractor shall not award both a cost-reimbursement subcontract and a fixed-price subcontract for construction or architect-engineer services or any combination thereof to the same firm where those subcontracts will be performed at the same site.
 - (iii) The contractor shall not employ the construction subcontractor or an affiliate to inspect the firm's work. The contractor shall assure that the working relationships of the construction subcontractor and the subcontractor inspecting its work and the authority of the inspector are clearly defined.

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- (i) **Contractor-Affiliated Sources.** Equipment, materials, supplies, or services from a contractor-affiliated source shall be purchased or transferred in accordance with 48 CFR 970.4402-3.
- (j) **Contractor-Subcontractor Relationship.** The obligations of the contractor under paragraph (a) of this clause, including the development of the purchasing system and methods, and purchases made pursuant thereto, shall not relieve the contractor of any obligation under this contract (including, among other things, the obligation to properly supervise, administer, and coordinate the work of subcontractors). Subcontracts shall be in the name of the contractor, and shall not bind or purport to bind the Government.
- (k) **Government Property.** Identification, inspection, maintenance, protection, and disposition of Government property shall conform with the policies and principles of 48 CFR Part 45, 48 CFR 945, the Federal Property Management Regulations 41 CFR Chapter 101, the DOE Property Management Regulations 41 CFR Chapter 109, and their contracts.
- (l) **Indemnification.** Except for Price-Anderson Nuclear Hazards Indemnity, no subcontractor may be indemnified except with the prior approval of the Senior Procurement Executive.
- (m) **Leasing of Motor Vehicles.** Contractors shall comply with 48 CFR 8.11 and 48 CFR 908.11.
- (n) **Make-or-Buy Plans.** Acquisition of property and services shall be obtained on a least-cost basis, consistent with the requirements of the "Make-or-Buy Plan" clause of this contract and the contractor's approved make-or-buy plan.
- (o) **Management, Acquisition and Use of Information Resources.** Requirements for automatic data processing resources and telecommunications facilities, services, and equipment, shall be reviewed and approved in accordance with applicable DOE Orders and regulations regarding information resources.
- (p) **Priorities, Allocations and Allotments.** Priorities, allocations and allotments shall be extended to appropriate subcontracts in accordance with the clause or clauses of this contract dealing with priorities and allocations.
- (q) **Purchase of Special Items.** Purchase of the following items shall be in accordance with the following provisions of 48 CFR 908.71 and the Federal Property Management Regulations, 41 CFR Chapter 101:
 - (1) Motor vehicles-48 CFR 908.7101

- (2) Aircraft-48 CFR 908.7102
- (3) Security Cabinets-48 CFR 908.7106
- (4) Alcohol-48 CFR 908.7107
- (5) Helium-48 CFR 908.7108
- (6) Fuels and packaged petroleum products-48 CFR 908.7109
- (7) Coal-48 CFR 908.7110
- (8) Arms and Ammunition-48 CFR 908.7111
- (9) Heavy Water-48 CFR 908.7121(a)
- (10) (10) Precious Metals-48 CFR 908.7121(b)
- (11) Lithium-48 CFR 908.7121(c)
- (12) Products and services of the blind and severely handicapped-41 CFR 101-26.701
- (13) Products made in Federal penal and correctional institutions-41 CFR 101-26.702
- (r) Purchase vs. Lease Determinations. Contractors shall determine whether required equipment and property should be purchased or leased, and establish appropriate thresholds for application of lease vs. purchase determinations. Such determinations shall be made:
 - (1) at time of original acquisition;
 - (2) when lease renewals are being considered; and
 - (3) at other times as circumstances warrant.
- (s) Quality Assurance. Contractors shall provide no less protection for the Government in its subcontracts than is provided in the prime contract.

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- (t) Setoff of Assigned Subcontractor Proceeds. Where a subcontractor has been permitted to assign payments to a financial institution, the assignment shall treat any right of setoff in accordance with 48 CFR 932.803.
- (u) Strategic and Critical Materials. The contractor may use strategic and critical materials in the National Defense Stockpile.
- (v) Termination. When subcontracts are terminated as a result of the termination of all or a portion of this contract, the contractor shall settle with subcontractors in conformity with the policies and principles relating to settlement of prime contracts in 48 CFR Subparts 49.1, 49.2 and 49.3. When subcontracts are terminated for reasons other than termination of this contract, the contractor shall settle such subcontracts in general conformity with the policies and principles in 48 CFR Subparts 49.1, 49.2, 49.3 and 49.4. Each such termination shall be documented and consistent with the terms of this contract. Terminations which require approval by the Government shall be supported by accounting data and other information as may be directed by the contracting officer.
- (w) Unclassified Controlled Nuclear Information. Subcontracts involving unclassified uncontrolled nuclear information shall be treated in accordance with 10 CFR part 1017.
- (x) Subcontract Flowdown Requirements. In addition to terms and conditions that are included in the prime contract which direct application of such terms and conditions in appropriate subcontracts, the contractor shall include the following clauses in subcontracts, as applicable:
 - (1) Davis-Bacon clauses prescribed in 48 CFR 22.407.
 - (2) Foreign Travel clause prescribed in 48 CFR 952.247-70.
 - (3) Counterintelligence clause prescribed in 48 CFR 970.0404-4(a).
 - (4) Service Contract Act clauses prescribed in 48 CFR 22.1006.
 - (5) State and local taxes clause prescribed in 48 CFR 970.2904-1.
 - (6) Cost or pricing data clauses prescribed in 48 CFR 970.1504-3-1(b).

I.65. DEAR 970.5245-1 PROPERTY (DEC 2000)

- (a) Furnishing of Government property. The Government reserves the right to furnish any property or services required for the performance of the work under this contract.
- (b) Title to property. Except as otherwise provided by the contracting officer, title to all materials, equipment, supplies, and tangible personal property of every kind and description purchased by the contractor, for the cost of which the contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass directly from the vendor to the Government. The Government reserves the right to inspect, and to accept or reject, any item of such property. The contractor shall make such disposition of rejected items as the contracting officer shall direct. Title to other property, the cost of which is reimbursable to the contractor under this contract, shall pass to and vest in the Government upon
 - (1) issuance for use of such property in the performance of this contract, or
 - (2) commencement of processing or use of such property in the performance of this contract, or
 - (3) reimbursement of the cost thereof by the Government, whichever first occurs. Property furnished by the Government and property purchased or furnished by the contractor, title to which vests in the Government, under this paragraph are hereinafter referred to as Government property. Title to Government property shall not be affected by the incorporation of the property into or the attachment of it to any property not owned by the Government, nor shall such Government property or any part thereof, be or become a fixture or lose its identity as personality by reason of affixation to any realty.
- (c) Identification. To the extent directed by the contracting officer, the contractor shall identify Government property coming into the contractor's possession or custody, by marking and segregating in such a way, satisfactory to the contracting officer, as shall indicate its ownership by the Government.
- (d) Disposition. The contractor shall make such disposition of Government property which has come into the possession or custody of the contractor under this contract as the contracting officer may direct during the progress of the work or upon completion or termination of this contract. The contractor may, upon such terms and conditions as the contracting officer may approve, sell, or exchange such property, or acquire such property at a price agreed upon by the contracting officer and the contractor as the fair value thereof. The amount received by the

contractor as the result of any disposition, or the agreed fair value of any such property acquired by the contractor, shall be applied in reduction of costs allowable under this contract or shall be otherwise credited to account to the Government, as the contracting officer may direct. Upon completion of the work or the termination of this contract, the contractor shall render an accounting, as prescribed by the contracting officer, of all government property which had come into the possession or custody of the contractor under this contract.

- (e) Protection of government property-management of high-risk property and classified materials.
 - (1) The contractor shall take all reasonable precautions, and such other actions as may be directed by the contracting officer, or in the absence of such direction, in accordance with sound business practice, to safeguard and protect government property in the contractor's possession or custody.
 - (2) In addition, the contractor shall ensure that adequate safeguards are in place, and adhered to, for the handling, control and disposition of high-risk property and classified materials throughout the life cycle of the property and materials consistent with the policies, practices and procedures for property management contained in the Federal Property Management regulations (41 CFR chapter 101), the Department of Energy Property Management regulations (41 CFR chapter 109), and other applicable regulations.
 - (3) High-risk property is property, the loss, destruction, damage to, or the unintended or premature transfer of which could pose risks to the public, the environment, or the national security interests of the United States. High-risk property includes proliferation sensitive, nuclear related dual use, export controlled, chemically or radioactively contaminated, hazardous, and specially designed and prepared property, including property on the militarily critical technologies list.
- (f) Risk of loss of Government property.
 - (1) (i) The contractor shall not be liable for the loss or destruction of, or damage to, Government property unless such loss, destruction, or damage was caused by any of the following:
 - (A) Willful misconduct or lack of good faith on the part of the contractor's managerial personnel;

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- (B) Failure of the contractor's managerial personnel to take all reasonable steps to comply with any appropriate written direction of the contracting officer to safeguard such property under paragraph (e) of this clause; or
 - (C) Failure of contractor managerial personnel to establish, administer, or properly maintain an approved property management system in accordance with paragraph (i)(1) of this clause.
 - (ii) If, after an initial review of the facts, the contracting officer informs the contractor that there is reason to believe that the loss, destruction of, or damage to the government property results from conduct falling within one of the categories set forth above, the burden of proof shall be upon the contractor to show that the contractor should not be required to compensate the government for the loss, destruction, or damage.
- (2) In the event that the contractor is determined liable for the loss, destruction or damage to Government property in accordance with (f)(1) of this clause, the contractor's compensation to the Government shall be determined as follows:
- (i) For damaged property, the compensation shall be the cost of repairing such damaged property, plus any costs incurred for temporary replacement of the damaged property. However, the value of repair costs shall not exceed the fair market value of the damaged property. If a fair market value of the property does not exist, the contracting officer shall determine the value of such property, consistent with all relevant facts and circumstances.
 - (ii) For destroyed or lost property, the compensation shall be the fair market value of such property at the time of such loss or destruction, plus any costs incurred for temporary replacement and costs associated with the disposition of destroyed property. If a fair market value of the property does not exist, the contracting officer shall determine the value of such property, consistent with all relevant facts and circumstances.
- (3) The portion of the cost of insurance obtained by the contractor that is allocable to coverage of risks of loss referred to in paragraph (f)(1) of this clause is not allowable.

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- (g) Steps to be taken in event of loss. In the event of any damage, destruction, or loss to Government property in the possession or custody of the contractor with a value above the threshold set out in the contractor's approved property management system, the contractor:
 - (1) Shall immediately inform the contracting officer of the occasion and extent thereof,
 - (2) Shall take all reasonable steps to protect the property remaining, and
 - (3) Shall repair or replace the damaged, destroyed, or lost property in accordance with the written direction of the contracting officer. The contractor shall take no action prejudicial to the right of the Government to recover therefore, and shall furnish to the Government, on request, all reasonable assistance in obtaining recovery.
- (h) Government property for Government use only. Government property shall be used only for the performance of this contract.
- (i) Property Management.
 - (1) Property Management System.
 - (i) The contractor shall establish, administer, and properly maintain an approved property management system of accounting for and control, utilization, maintenance, repair, protection, preservation, and disposition of Government property in its possession under the contract. The contractor's property management system shall be submitted to the contracting officer for approval and shall be maintained and administered in accordance with sound business practice, applicable Federal Property Management regulations and Department of Energy Property Management regulations, and such directives or instructions which the contracting officer may from time to time prescribe.
 - (ii) In order for a property management system to be approved, it must provide for:
 - (A) Comprehensive coverage of property from the requirement identification, through its life cycle, to final disposition;
 - (B) Employee personal responsibility and accountability for Government-owned property;

- (C) Full integration with the contractor's other administrative and financial systems; and
 - (D) A method for continuously improving property management practices through the identification of best practices established by "best in class" performers.
- (iii) Approval of the contractor's property management system shall be contingent upon the completion of the baseline inventory as provided in subparagraph (i)(2) of this clause.

(2) Property Inventory.

- (i) Unless otherwise directed by the contracting officer, the contractor shall within six months after execution of the contract provide a baseline inventory covering all items of Government property.
 - (ii) If the contractor is succeeding another contractor in the performance of this contract, the contractor shall conduct a joint reconciliation of the property inventory with the predecessor contractor. The contractor agrees to participate in a joint reconciliation of the property inventory at the completion of this contract. This information will be used to provide a baseline for the succeeding contract as well as information for closeout of the predecessor contract.
- (j) The term "contractor's managerial personnel" as used in this clause means the contractor's directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of:
- (1) All or substantially all of the contractor's business; or
 - (2) All or substantially all of the contractor's operations at any one facility or separate location to which this contract is being performed; or
 - (3) A separate and complete major industrial operation in connection with the performance of this contract; or
 - (4) A separate and complete major construction, alteration, or repair operation in connection with performance of this contract; or
 - (5) A separate and discrete major task or operation in connection with the performance of this contract.

- (k) The contractor shall include this clause in all cost reimbursable subcontracts.

PART III – LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS

SECTION J

LIST OF ATTACHMENTS

PART III

SECTION J

LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS

LIST OF ATTACHMENTS

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APPENDIX A – PERSONNEL APPENDIX

In accordance with the Section H Contract Clause, entitled, “Human Resources,” if the selected Offeror and DOE need to reach an advance understanding on Contractor human resources it will be appended here.

See Attachment 1 - APPENDIX A – PERSONNEL APPENDIX

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APPENDIX B
SPECIAL FINANCIAL INSTITUTION ACCOUNT AGREEMENT FOR USE WITH
THE PAYMENTS CLEARED FINANCING AGREEMENT

NOTE: THE OFFEROR SELECTED FOR AWARD WILL BE REQUIRED TO AWARD A COMPETITIVE SUBCONTRACT TO A FINANCIAL INSTITUTION DURING THE TRANSITION PERIOD.

(Name of Contractor)
Contract Number XX-XXX-XXXXXXXXXX
Department of Energy Account

This agreement entered into this, _____ day of _____, _____, between the UNITED STATES OF AMERICA, represented by the Department of Energy (hereinafter referred to as "DOE") and _____ a corporation existing under the laws of the State of _____ (hereinafter referred to as the "Contractor") and _____, a financial institution corporation existing under the laws of the State of _____, located at _____ (hereinafter referred to as the "Financial Institution").

RECITALS

- (a) On the effective date of _____, _____, DOE and the Contractor entered into Agreement(s) No. _____, or a Supplemental Agreement(s) thereto, providing for the transfer of funds on a payments-cleared basis.
- (b) DOE requires that amounts transferred to the Contractor thereunder be deposited in a Special Bank Account at a financial institution covered by Department of the Treasury-approved Government deposit insurance organizations that are identified in I TFM 6-9000.

This Special Bank Account must be kept separate from the Contractor's general or other funds, and the parties are agreeable to so depositing said amounts with the Financial Institution.

- (c) The Special Bank Account shall be designated [Name of Contractor], DOE Special Bank Account.

CONVENANTS

In consideration of the foregoing, and for other good and valuable considerations, it is agreed that--

- (1) The Government shall have a title to the credit balance in the Special Bank Account to secure the repayment of all funds transferred to the Contractor, and said title shall be superior to any lien, title or claim of the Financial Institution or others with respect to the Special Bank Account.
- (2) The Financial Institution shall be bound by the provisions of said Agreement(s) between DOE and the Contractor relating to the transfer of funds into and the withdrawal of funds from the Special Bank Account, which are hereby incorporated into this Agreement by reference, but the Financial Institution shall not be responsible for the application of funds withdrawn from the Special Bank Account. After receipt by the Financial Institution of written directions from DOE, the Financial Institution shall act thereon and shall be under no liability to any party hereto for any action taken in accordance with the said written directions.
- (3) DOE, or its authorized representatives, shall have access to financial records maintained by the Financial Institution with respect to such Special Bank Account at all reasonable times and for all reasonable purposes, including, but without limitation to, the inspection or copying of such financial records and any or all memoranda, checks, payment requests, correspondence, or documents pertaining thereto. Such financial records shall be preserved by the Financial Institution for a period of 6 years after the final payment under the Special Bank Account Agreement.
- (4) In the event of the service of any writ of attachment, levy of execution, or commencement of garnishment proceedings with respect to the Special Bank Account, the Financial Institution shall promptly notify DOE at:

U.S. Department of Energy
Nevada Operations Office
P.O. Box 98518
Las Vegas, Nevada 89193-8518

- (5) DOE shall authorize funds that shall remain available to the extent that obligations have been incurred in good faith thereunder by the Contractor to the Financial Institution for the benefit of the Special Bank Account. The Financial Institution agrees to honor upon presentation for payment all payments issued by the Contractor and to restrict all withdrawals against the funds authorized to an amount sufficient to maintain the average daily account balance in a net positive and as close to zero as administratively possible.

The Financial Institution agrees to service the account in this manner based on the requirements and specifications contained in the Contractor's solicitation No. _____, dated _____, _____, which is attached to this Special Bank Account Agreement. The

Financial Institution agrees that per-item costs, detailed in the form "Schedule of Financial Institution during the term of this Agreement.

- (6) The Financial Institution shall post collateral, acceptable under Department of the Treasury Circular 176, with the Federal Reserve Bank in an amount sufficient to collateralize the highest balance the Special Bank Account included in this Agreement, less the Department of the Treasury-approved deposit insurance.
- (7) This Special Bank Account Agreement, with all its provisions and covenants, shall be in effect for a term of ____ years, beginning on the ____ day of _____, _____, and ending on the ____ day of _____, _____, unless earlier terminated as provided in this agreement.

The contractor has the option to extend the term of the Special Bank Account Agreement for up to ____ years. The total duration of this Special Bank Account Agreement, including the options, shall not exceed five years. Written notification of the option to extend will be provided by the Contractor ninety days prior to the expiration of this Agreement.

- (8) DOE, the Contractor, or the Financial Institution may terminate this Agreement at any time within the agreement period upon submitting written notification to the other parties 90 days prior to the desired termination date. The specific provisions for operating the account during this 90-day period are contained in Covenant 11.
- (9) DOE or the Contractor may terminate this Agreement at any time upon 30 days' written notice to the Financial Institution if DOE or the Contractor, or both parties, find that the Financial Institution has failed to substantially perform its obligations under this Agreement or that the Financial Institution is performing its obligations in a manner that precludes administering the program in an effective and efficient manner or that precludes the effective utilization of the Government's cash resources.
- (10) Notwithstanding the provisions of Covenants 8 and 9, in the event that the Agreement between DOE and the Contractor is not renewed or is terminated, this Special Bank Account Agreement between DOE, the Contractor, and the Financial Institution shall be terminated automatically upon the delivery of written notice to the Financial Institution.
- (11) In the event of termination, the Financial Institution agrees to retain the Contractor's Special Bank Account for an additional 90-day period after the effective termination date, to allow for clearance of outstanding payment items. During this 90-day period, DOE shall place on deposit in that account sufficient funds to cover all outstanding payments items presented for payment.

During the entire 90-day period, it is further understood that:

- (a) The Financial Institution shall maintain collateral in an amount sufficient to collateralize the highest balance in the Special Bank Account, less Federal Deposit Insurance Corporation coverage on the account.
- (b) All service charges shall be consistent with the amounts reflected in this Special Bank Account Agreement.
- (c) All terms and conditions of the bid submitted by Financial Institution that are not inconsistent with the 90-day additional term shall remain in effect.
- (d) This Agreement shall continue in effect, for the 90-day additional period, with exception of the following:
 - 1. Funds Authorized (Covenant 5)
 - 2. Term Agreement (Covenant 7)
 - 3. Termination of Agreement (Covenants 8 and 9)

All terms and conditions of the aforesaid bid submitted by the Financial Institution that are not inconsistent with this 90-day additional term shall remain in effect for this period.

The Financial Institution has submitted the forms entitled "Technical Representations and Certifications," and "Schedule of Financial Institution Processing Charges." These forms have been accepted by the Contractor and DOE and are incorporated herein with the document entitled "Financial Institution's Information on the Payments Cleared Arrangement" as an integral part of this Agreement.

IN WITNESS WHEREOF the parties hereto have caused this Special Bank Account Agreement, which consists of _____ pages, to be executed as of the day and year first above written.

For: _____ (The Contractor)

For: _____ (The Financial Institution)

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

For: The United States of America:

Signature: _____

Name: _____

Title: Contracting Officer

Date: _____

CERTIFICATE

I, _____, certify that I am the _____ of
corporation named as Contractor herein; that _____, who signed
this Special Bank Account Agreement on behalf of the contractor, was then
_____ of said corporation; and that said Special Bank Account
Agreement was duly signed for in behalf of said corporation by authority of its governing body
and is within the scope of its corporation powers.

(Corporate Seal) (Signature)

CERTIFICATE

I, _____, certify that I am the
_____ of the corporation named as the Financial Institution herein; that
_____, who signed this Agreement on behalf of the Financial
Institution, was then _____ of said Bank; and that said Special Bank
Account Agreement was duly signed for and in behalf of said Bank by authority of its governing
body and is within the scope of its corporate powers.

(Corporate Seal) (Signature)

PART III - LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS
SECTION J – LIST OF ATTACHMENTS

APPENDIX C –SMALL BUSINESS SUBCONTRACTING PLAN

The Offeror's Small Business Subcontracting Plan is attached.

**SEE ATTACHMENT 2 - APPENDIX C - SMALL BUSINESS SUBCONTRACTING
PLAN**

Annual Plans for future fiscal years will be incorporated in the contract by modification.

PART III -LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS
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APPENDIX D – KEY PERSONNEL

Pursuant to the Section I, Contract Clause DEAR 952.215-70, entitled, “Key Personnel,” the following positions are considered to be essential to work being performed.

Title	Name
General Manager	Ken Hess
Deputy General Manager	Don Pearman
Environmental, Safety and Health Manager	Dennis Sorenson
Quality Assurance Manager	Don Krisha
Manager of Licensing and Engineering Projects	Nancy Williams
Site Recommendation Project Manager	Jerry King
Repository Design Project Manager	Larry Trautner
Science and Analysis Project Manager	Bob Andrews
Licensing Application Project Manager	Steve Cereghino
Waste Package Manager	Tom Doering
Licensing Support Manager	Don Beckman
Chief Science Officer	Michael Voegele
Project Controls Manager	Scott Hajner
Procurement Manager	Darell von der Linden
Chief Information Officer	David R. Tommela
Business Manager	Pete Maxfield
Communications Manager	Bea Reilly

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APPENDIX E - LIST OF APPLICABLE DIRECTIVES

Pursuant to the Section I, Contract Clause DEAR 970 5204-2, entitled, "Laws, Regulations, and DOE Directives".

List B
DOE Directives

SRID	Directive No.	Directive Title	Dated	Applicability	Remarks
Orders					
<input checked="" type="checkbox"/>	DOE O 110.3	Conference Management	11-03-99	1. Applies to current OCRWM mission 2. No exclusion for NRC-regulated facilities 3. Includes CRD - Applies to contractor	Cancels DOE N 110.3
<input checked="" type="checkbox"/>	DOE O 130.1	Budget Formulation Process	09-29-95	1. Applies to current OCRWM mission 2. No exclusion for NRC-regulated facilities 3. Includes CRD	Cancels DOE 5100.3, 5100.4, 5100.5, 5100.6A
<input checked="" type="checkbox"/>	DOE O 151.1A	Comprehensive Emergency Management System	11-01-00	1. Applies to current OCRWM mission 2. Activities regulated by NRC license excluded 3. Includes CRD - Applies to contractor <i>Notes: Although DOE O 151.1A does not apply to activities regulated under NRC, some YMP facilities would not be subject to NRC licensing, but would still be subject to DOE O 151.1A. The M&O will use NRC regulations for activities covered by License Application Direction for Emergency Management Planning needs to contemplate dual regulation.</i>	Cancels DOE O 151.1 which cancelled DOI, 5500.1B, 5500.2B, 5500.3A, 5500.4A, 5500.5A, 5500.7B, 5500.8A, 5500.9A, and Chg 1 of DOE 5500.10A

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SRID	Directive No.	Directive Title	Dated	Applicability	Remarks
<input checked="" type="checkbox"/>	DOE O 200.1	Information Management Program	09-30-96	1. Applies to current OCRWM mission 2. Activities regulated by NRC license excluded 3. Includes CRD - Applies to contractor <i>Note: Order applies until OCRWM activities are under NRC regulation. At that point, some activities may be exempted.</i>	Cancels DOE 1324.5B, 5900.1A, 1130.8A, 1330.1D, 1410.2, 1450.3A, 1700.1, 1800.1A, 5300.1C
<input checked="" type="checkbox"/>	DOE O 210.1	Performance Indicators And Analysis Of Operations Information	9-27-95	1. Applies to current OCRWM mission 2. No exclusion for NRC-regulated facilities 3. Includes CRD - Applies to contractor	Cancels DOE Order 5480.26
<input checked="" type="checkbox"/>	DOE O 221.1	<i>Reporting Fraud, Waste, and Abuse To The Office of Inspector General</i>	3-22-01	1. Applies to current OCRWM mission 2. No exclusion for NRC-regulated facilities 3. Includes CRD - Applies to contractor	Cancels DOE Order 2030.4B.
<input checked="" type="checkbox"/>	DOE O 221.2	<i>Cooperation With The Office of Inspector General</i>	3-22-01	1. Applies to current OCRWM mission 2. No exclusion for NRC-regulated facilities 3. Includes CRD - Applies to contractor	Cancels DOE Order 2320.1C
<input checked="" type="checkbox"/>	DOE O 224.1	Contractor Performance-Based Management Process	12-08-97	1. Applies to current OCRWM mission 2. No exclusion for NRC-regulated facilities 3. Includes CRD - Applies to contractor	
<input checked="" type="checkbox"/>	DOE O 225.1A	Accident Investigations	11-26-97	1. Applies to current OCRWM mission 2. No exclusion for NRC-regulated facilities 3. Includes CRD - Applies to contractor	Cancels DOE O 225.1; paragraphs 1-5, 6a(1-10), 6b, 6d, 6f(1-8), and the second mis numbered 6f, and Chapters I and II of DOE 5484.1

SRID	Directive No.	Directive Title	Dated	Applicability	Remarks
<input checked="" type="checkbox"/>	DOE O 231.1	Environment, Safety, And Health Reporting	9-30-95	1. Applies to current OCRWM mission 2. No exclusion for NRC-regulated facilities 3. Includes CRD - Applies to contractor	Cancels paragraphs in DOE 5400.1, 5400.2A, 5400.5, 5440.1E, 5480.3, 5480.26, 5483.1A, 5484.1B, and paragraph 5B(2) of this order which was canceled by DOE O 470.2A.
<input checked="" type="checkbox"/>	DOE O 232.1A	Occurrence Reporting And Processing Of Operations Information	07-21-97	1. Applies to current OCRWM mission. 2. Excludes operations information Regulated by NRC. 3. Includes CRD - Applies to contractor. <i>Note: Not all OCRWM activities will involve operations regulated under NRC license. ORPS program needs to consider inclusion of NRC reporting at that time</i>	Cancels DOE O 232.1 which cancelled DOE 5000.3B.
<input checked="" type="checkbox"/>	DOE O 241.1A	Scientific And Technical Information Management	04-09-01	1. Applies to current OCRWM mission 2. No exclusion for NRC-regulated facilities 3. Includes CRD - Applies to contractor	Cancels DOE O 241.1 which cancels DOE 1430.D and its associated guide
<input checked="" type="checkbox"/>	DOE O 251.1A	Directives System	01-30-98	1. Applies to current OCRWM mission 2. No exclusion for NRC-regulated facilities 3. Includes CRD - Applies to contractor	Cancels DOE O 251.1
<input checked="" type="checkbox"/>	DOE O 252.1	Technical Standards Program	11-19-99	1. Applies to current OCRWM mission 2. No exclusion for NRC-regulated facilities 3. Includes CRD - Applies to contractor	Cancels DOE 1300.2A
<input checked="" type="checkbox"/>	DOE O 311.1A	Equal Employment Opportunity And Diversity Program	12-30-96	1. Applies to current OCRWM mission 2. Activities regulated under NRC license excluded 3. Includes CRD - Applies to contractor	Cancels DOE O 311.1

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SRID	Directive No.	Directive Title	Dated	Applicability	Remarks
<input checked="" type="checkbox"/>	DOE O 350.1	Contractor Human Resource Management Programs	9-30-96	1. Applies to current OCRWM mission 2. Activities regulated under NRC license excluded 3. Includes CRD - Applies to contractor	Cancels DOE Orders 3220.1, 3220.4A, 3220.6A, 3309.1A, 3830.1, 3890.1A, DOE Notice 3131.1
<input checked="" type="checkbox"/>	DOE O 412.1	Work Authorization System	4-20-99	1. Applies to current OCRWM mission 2. Activities regulated under NRC license excluded 3. Includes CRD - Applies to contractor	Cancels DOE 5700.7C
<input checked="" type="checkbox"/>	DOE O 413.1	Management Control Program	12-06-95	1. Applies to current OCRWM mission 2. No exclusion for NRC-regulated facilities 3. Includes CRD - Applies to contractor	Cancels DOE Order 1000.3B
<input checked="" type="checkbox"/>	DOE O 413.3	Program and Project Management for Acquisition of Capital Assets		1. Applies to current OCRWM mission 2. Activities under QARD excluded 3. Includes CRD - Applies to contractor	Cancels DOE N 430.1
<input checked="" type="checkbox"/>	DOE O 414.1A	Quality Assurance	09-29-99	1. Applies to current OCRWM mission 2. Activities under QARD excluded 3. Includes CRD - Applies to contractor	Cancels DOE O 414.1 which cancelled DOE 5700.6C
<input checked="" type="checkbox"/>	DOE O 420.1	Facility Safety	10-13-95	1. Applies to current OCRWM mission 2. Activities regulated under NRC license Excluded. 3. Includes CRD <i>Note: Not all OCRWM facilities will qualify for NRC exemption. Furthermore, NRC requirements do not address occupational safety requirements or environmental protection requirements other than radiation.</i>	Cancels DOE 5480.7A, 5480.24, 5480.28, Division 13 of 6430.1A

SRID	Directive No.	Directive Title	Dated	Applicability	Remarks
<input checked="" type="checkbox"/>	DOE O 430.1A	Life-Cycle Asset Management	10-14-98	1. Applies to current OCRWM mission 2. No exclusion for NRC-regulated facilities 3. Includes CRD - Applies to contractor	Cancels DOE O 430.1 which cancelled DOE 1332.1A; DOE 4010.1A; DOE 4300.1C; DOE 4320.1B; DOE 4320.2A; DOE 4330.4B; DOE 4330.5; DOE 4540.1; DOE 4700.1; DOE 4700.3; DOE 4700.4; DOE 5700.2D
<input checked="" type="checkbox"/>	DOE O 430.2	In-House Energy Management	06-13-96	1. Applies to current OCRWM mission 2. No exclusion for NRC-regulated facilities 3. No CRD - but applies to M&O	Cancels DOE Order 4330.2D
<input checked="" type="checkbox"/>	DOE O 440.1A	Worker Protection Management For DOE Federal And Contractor Employees	03-27-98	1. Applies to current OCRWM mission 2. No exclusion for NRC-regulated facilities 3. Includes CRD - Applies to contractor	Cancels DOE O 440.1, which cancelled DOE 3790.1B, Except VIII; attach. 2, para. 2C, 2D(2)-(3), 2E(1)-(8), attach. 3, para. 2C, 2D(2)-(3), 2E(1)-(7), of DOE 5480.4; DOE 5480.7A; DOE 5480.8A; DOE 5480.9A; DOE 5480.10; DOE 5480.16A; DOE 5483.1A
<input checked="" type="checkbox"/>	DOE O 440.2	Aviation	10-26-95	1. Applies to current OCRWM mission 2. No exclusion for NRC-regulated facilities 3. Includes CRD - Applies to contractor	Cancels DOE 5480.13A
<input checked="" type="checkbox"/>	DOE O 442.1A	Department Of Energy Employee Concerns Program	06-06-01	1. Applies to current OCRWM mission 2. No exclusion for NRC-regulated facilities 3. Includes CRD - Applies to contractor	Cancels DOE O 442.1 which cancels DOE 5480.29

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SRID 1	Directive No.	Directive Title	Dated	Applicability	Remarks
<input checked="" type="checkbox"/>	DOE O 460.1A	Packaging And Transportation Safety	10-02-96	1. Applies to current OCRWM mission 2. Excludes activities regulated under NRC license. 3. Includes CRD - Applies to contractor <i>Note: Order will apply to those activities not covered by NRC license.</i>	Cancels DOE O 460.1 which cancels DOE 1540.2 and DOE 5480.3
<input checked="" type="checkbox"/>	DOE O 460.2	Departmental Materials Transportation And Packaging Management	9-27-95	1. Applies to current OCRWM mission 2. Excludes requirements that overlap or duplicate those of NRC 3. Includes CRD - Applies to contractor <i>Note: Order will apply to those activities not covered by NRC license.</i>	Cancels DOE 1540.1A, 1540.2, 1540.3A
<input checked="" type="checkbox"/>	DOE O 470.1	Safeguards And Security Program	9-28-95	1. Applies to current OCRWM mission 2. Excludes activities regulated under NRC license 3. Includes CRD - Applies to contractor <i>Note: Order will apply to those activities not covered by NRC license</i>	Cancels DOE Orders 5630.11B, 5630.13A, 5630.14A, 5630.15, 5630.16A, 5630.17, 5631.1C, 5631.4A, 5634.1B, 5634.3, 5639.3, Chapter XI of DOE Manual 5632.1C-1
<input checked="" type="checkbox"/>	DOE O 470.2A	Security And Emergency Management Independent Oversight And Performance Assurance Program	03-01-00	1. Applies to current OCRWM mission 2. No exclusion for NRC-regulated facilities 3. Includes CRD - Applies to contractor	Cancels DOE Orders 470.2 which Cancels DOE 5630.12A, and DOE 231.1's paragraph 5B(2), DOE Manual 231.1-1's Chapter IV
<input checked="" type="checkbox"/>	DOE O 471.1A	Identification And Protection Of Unclassified Controlled Nuclear Information	6-30-00	1. Applies to current OCRWM mission 2. No exclusion for NRC-regulated facilities 3. Includes CRD - Applies to contractor	Cancels DOE O 471.1 which Cancels DOE 5635.4, 5650.3A

SRID	Directive No.	Directive Title	Dated	Applicability	Remarks
<input checked="" type="checkbox"/>	DOE O 471.2A	Information Security Program	03-27-97	1. Applies to current OCRWM mission 2. Excludes requirements that overlap or duplicate those of NRC 3. Includes CRD - Applies to contractor <i>Note: Order will apply to those activities not covered by NRC license</i>	Cancels DOE O 471.2 which Cancels DOE 5630.8A, DOE 5639.1, DOE 5639.5, DOE 5639.6A, DOE 5639.7, DOE M 5632.1C-1, Chapter III, Para. 1, 2, & 4 Thru. 9
<input checked="" type="checkbox"/>	DOE O 472.1B	Personnel Security Activities	03-24-97	1. Applies to current OCRWM mission 2. No exclusion for NRC-regulated facilities 3. Includes CRD - Applies to contractor	Cancels DOE Orders 472.1 which Cancels DOE 5631.2C, Except Chapters I Thru IX, and DOE 5631.6A
<input checked="" type="checkbox"/>	DOE O 534.1A	Accounting	07-05-01	1. Applies to current OCRWM mission 2. No exclusion for NRC-regulated facilities 3. Includes CRD - Applies to contractor	Cancels DOE O 534.1 which cancels DOE 2100.3A, 2200.4, 2200.5B, 2200.6A, 2200.7, 2200.8B, 2200.9B, 2200.10A
<input checked="" type="checkbox"/>	DOE O 551.1A	Official Foreign Travel	8-25-00	1. Applies to current OCRWM mission 2. Activities regulated under NRC license excluded 3. Includes CRD - Applies to contractor	Cancels DOE O 551.1 which cancels DOE 1500.3 and all exemptions, waivers, and existing draft policy
<input checked="" type="checkbox"/>	DOE 1220.1A	Congressional And Intergovernmental Affairs	9-4-92	1. Applies to current OCRWM mission 2. No exclusion for NRC-regulated facilities 3. No CRD - but applies to contractor	
<input checked="" type="checkbox"/>	DOE 1230.2	American Indian Tribal Government Policy	04-08-92	1. Applies to current OCRWM mission 2. No exclusion for NRC-regulated facilities 3. No CRD - but applies to contractor	
<input type="checkbox"/>	DOE 1340.1B	Management Of Public Communications Publications And Scientific Technical And Engineering Publications	01-07-93	1. Applies to current OCRWM mission 2. No exclusion for NRC-regulated facilities 3. No CRD - but applies to contractor	

SRJD i	Directive No.	Directive Title	Dated	Applicability	Remarks
<input checked="" type="checkbox"/>	DOE 1350.1	Audiovisual And Exhibits Management	10-28-81	1. Applies to current OCRWM mission 2. No exclusion for NRC-regulated facilities 3. No CRD - but applies to contractor	
<input checked="" type="checkbox"/>	DOE 1450.4	Consensual Listening-In To Or Recording Telephone/Radio Conversations	11-12-92	1. Applies to current OCRWM mission 2. No exclusion for NRC-regulated facilities 3. No CRD - but applies to contractor	
<input checked="" type="checkbox"/>	DOE 5400.1	General Environmental Protection Program (Portions Apply)	11-9-88	1. Applies to current OCRWM mission 2. No exclusion for NRC-regulated facilities 3. No CRD - but applies to contractor	DOE Order 231.1 cancelled paragraphs 2B, 4B, 4C of Chapter II; 2D, 3B of Chapter III
<input checked="" type="checkbox"/>	DOE 5400.5	Radiation Protection Of The Public And The Environment (Portions Apply)	2-8-90	1. Applies to current OCRWM mission 2. Requirements that duplicate those of NRC under license are excluded 3. No CRD - but applies to contractor	DOE Order 231.1 cancelled paragraph 1A(3)(A) of Chapter II
<input checked="" type="checkbox"/>	DOE 5480.4	Environmental Protection, Safety, And Health Protection Standards	5-15-84	1. Applies to current OCRWM mission 2. Requirements that duplicate those of NRC under license are excluded 3. No CRD - but applies to contractor	DOE O 440.1 cancelled attach. 2, para. 2C, 2D(2)-(3), 2E(1)-(8), and attach. 3, para. 2C, 2D(2)-(3), 2E(1)-(7).
<input checked="" type="checkbox"/>	DOE 5480.19	Conduct Of Operations Requirements For DOE Facilities	7-9-90	1. Applies to current OCRWM mission 2. No exclusion for NRC-regulated facilities 3. No CRD, but applies to contractor	
<input checked="" type="checkbox"/>	DOE 5632.1C	Protection And Control Of Safeguards And Security Interests	07-15-94	1. Applies to current OCRWM mission 2. Exempts NRC-licensed activities and OCRWM waste shipments 3. No CRD - but applies to contractor <i>Note: Not all OCRWM activities will be NRC-regulated; dual regulation will occur.</i>	Cancels DOE 5632.1B; DOE 5632.2A; DOE 5632.5; DOE 5632.6; DOE 5632.9A; DOE 5632.11; 5635.1A; DOE 5635.2B & DOE 5635.3)
<input type="checkbox"/>	DOE 5670.3	Counterintelligence Program	09-04-92	1. Applies to current OCRWM mission 2. No exclusion for NRC-regulated facilities 3. No CRD - but applies to contractor	

SRID 1	Directive No.	Directive Title	Dated	Applicability	Remarks
MANUALS²					
<input checked="" type="checkbox"/>	DOE M 200.1-1 Chapter 9 only	Telecommunication Security Manual	03-97	1. Applies to current OCRWM mission 2. No exclusion for NRC-regulated facilities. 4. Includes CRD - Applies to Contractor	This is a restricted distribution manual. Chapter 9 only. Compliance to manual as stated in purpose of manual
<input checked="" type="checkbox"/>	DOE M 231.1-1	Environment, Safety, And Health Reporting Manual	9-30-95	1. Applies to current OCRWM mission 2. No exclusion for NRC-regulated facilities. 3. Includes CRD - Applies to contractor	DOE Order 470.2A cancels Chapter IV
<input checked="" type="checkbox"/>	DOE M 232.1-1A	Occurrence Reporting And Processing Of Operations Information	07-21-97	1. Applies to current OCRWM mission 2. No exclusion for NRC-regulated facilities. 3. Includes CRD - Applies to contractor	
<input checked="" type="checkbox"/>	DOE M 251.1-1A	Directives System Manual	01-30-98	1. Applies to current OCRWM mission 2. No exclusion for NRC-regulated facilities. 3. Includes CRD - Applies to contractor	
<input checked="" type="checkbox"/>	DOE M 471.2-1B	Classified Matter Protection And Control Manual	01-06-99	1. Applies to current OCRWM mission 2. No exclusion for NRC-regulated facilities 3. Includes CRD - Applies to contractor	
<input checked="" type="checkbox"/>	DOE M 472.1-1B	Personnel Security Program Manual	07-12-01	1. Applies to current OCRWM mission 2. No exclusion for NRC-regulated facilities. 3. Includes CRD - Applies to contractor	Cancels DOE M 472.1-1A which cancels DOE M 472.1-1

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SRID 1	Directive No.	Directive Title	Dated	Applicability	Remarks
Notices³					
<input checked="" type="checkbox"/>	DOE N 142.1	Unclassified Foreign Visits And Assignments	07-14-99	1. Applies to current OCRWM mission 2. No exclusion for NRC-regulated facilities. 3. No CRD - Applies to contractor	Cancels DOE 1240.2B. This Notice supplements DOE P 142.1 dated 7-14-99, which sets overall Departmental policy on unclassified foreign visits and assignments. It is a complement to existing counterintelligence and security orders and policies. Extended by DOE N 251.37
<input checked="" type="checkbox"/>	DOE N 231.1	Environment, Safety, and Health Reporting Notice	01/15/02	1. Applies to current OCRWM mission 2. No exclusion for NRC-regulated facilities 3. Includes CRD - Applies to contractor	
<input checked="" type="checkbox"/>	DOE N 450.4	Assignment of Responsibilities for Executive Order 13148, Greening the Government through Leadership in Environmental Management	02/05/01	1. Applies to current OCRWM mission 2. No exclusion for NRC-regulated facilities 3. Includes CRD - Applies to contractor	Extended by DOE N 450.5 until 09/01/02, unless sooner rescinded. The CRD establishes the basis for an Environmental Management System (EMS) and improving environmental performance through the use of management systems and aggressive pollution prevention initiatives

SRID	Directive No.	Directive Title	Dated	Applicability	Remarks
1					
Guides					
Guides support Orders with the same number. Guides provide non-mandatory, supplemental information about acceptable methods for implementing requirements, including lessons learned, suggested practices, instructions, and suggested performance measures. Guides may identify acceptable ways to implement requirements by referencing appropriate Technical Standards, but they shall not impose additional requirements. Current guides may be found at http://www.directives.doe.gov/					
OE good practices guides are at http://www.er.doe.gov/production/er-80/er-82/gpguides.html					
DOE Technical standards					
Technical Standards and Related Documents are non-mandatory criteria managed under the Technical Standards Program to provide guidance to contractors and DOE personnel on acceptable methods for meeting requirements." Current standards may found at http://tis.eh.doe.gov/techstds/					

CRD = Contractor Requirements Document
DOE = Department of Energy
M&O = Management and Operating Contractor

NRC = Nuclear Regulatory Commission
OCRWM = Office of Civilian Radioactive Waste Management

ORPS = Occurrence Reporting Processing System
QARD = Quality Assurance Requirements Document
YAMP = Yucca Mountain Site Characterization Project

1. Directives identified as part of the SRID [checked box in first column] take precedence over all other determinations of applicability for requirements contained in those directives. The SRID was approved by the YMSCO Project Manager on November 3, 1999 and contains the ES&H requirements applicable to the project.
2. Except where indicated, manuals support Orders or policies with the same number; responsibilities and applicability's for manuals parallel those for the corresponding Orders. Occasionally, manuals do not relate to specific Orders. For these cases, responsibilities and applicabilities are indicated.
3. Notices parallel Orders of the same number and either permanent or temporary [expire in 90 days to 1 year]. Notices of a temporary in nature will not be included in this list. The contractor is expected to comply with all applicable notices with out them being expressly added to this list.

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APPENDIX F – SENSITIVE FOREIGN NATIONS CONTROL

In accordance with the contract clause in Section I entitled "Sensitive Foreign Nations Controls," this Attachment sets forth the requirements the contractor must comply with during the performance of work under this contract.

1. Definition of Sensitive Country

Sensitive Country (Reference DOE Notice No. 142.1, Unclassified Foreign Visits and Assignments)

For purposes of this contract, a "sensitive country" shall be one of the countries listed in DOE Notice 142.1.

2. Definitions

a. Foreign National A foreign national is any person who is not a U.S. national or is a stateless person.

(1) Immigrant Alien A foreign national authorized by the Immigration and Naturalization Service to reside and work in the U.S. for an indefinite period and who is eligible to become, in time, a U.S. citizen. Most immigrant aliens may also be referred to as Permanent Resident Aliens (PRA's).

(2) Stateless Person One who currently is without nationality (a) by the action of a state in withdrawing the protection of nationality, (b) by his or her own action in effectively renouncing the nationality previously held, or (c) because he or she has never held nationality due to the circumstances of birth.

b. Exchange Visitor Program A program sponsored by the United States Information Agency. The program provides for joint projects, research assignments, or specialized training at Department of Energy (DOE) facilities by foreign nationals selected by officials of their country, or by DOE to promote the general interest of international exchange.

c. Foreign National Visits Foreign nationals sponsored for visits or assignments may include, among others:

(1) Officials or other persons employed by foreign governments or other foreign institutions, who may or may not be involved in cooperation under international agreements;

- (2) Foreign students at U.S. institutions;
 - (3) Employees of DOE or other U.S. Government agencies or their contractors, of universities, of companies (professional or service staff), or of other institutional; and
 - (4) Prospective employees of DOE or DOE contractors.
- d. High Level or Protocol Visits This connotes the visit of a foreign national who is afforded special consideration for policy reasons.
- e. Indices Check A procedure whereby a request is made to appropriate U.S. Government agencies to determine if information exists on a particular foreign national.
- f. Security Facility A specific physically bounded area, individually certified by the cognizant security officer in accordance with DOE Order 5632.1C, which has been approved by DOE for generating, receiving, using, processing, storing, reproducing, transmitting, destroying, or handling special nuclear material or classified matter. A security facility temporarily sanitized to protect a security interest during a visit or assignment continues to be a security facility for the purpose of DOE Notice 142.1.
- g. Sensitive Facility A designated DOE facility listed in DOE Notice 142.1 which contains one or more security facilities and/or nonproliferation information, technology or other sensitive subjects.
- h. Sensitive Subjects Unclassified subject/topic identified by DOE which involves information, activities, and/or technologies that are relevant to national security. Disclosure of sensitive subjects has the potential for enhancing nuclear weapons capability, leading to nuclear proliferation, divulging militarily critical technologies, or revealing other advanced technologies. Therefore, they require special management oversight, especially prior to release to foreign nationals. Some sensitive subjects are already controlled as Unclassified Controlled Nuclear Information or as Export Controlled Information under U.S. laws and regulations.
- i. Security Plan A plan developed and implemented to protect DOE and DOE contractor personnel and facilities, and to prevent the compromise of a DOE security interest or sensitive subject to a foreign visitor or assignee; this is a critical element of the visits and assignments system.
- j. Sensitive Country A country to which particular consideration is given for policy reasons during the DOE internal review and approval process of visits and assignments by foreign nationals. Countries may appear on this list for reasons of national security, nuclear nonproliferation, regional instability, or terrorism

support. The DOE list does not necessarily reflect the policies or views of any other agency of the U.S. Government. For purposes of DOE Notice 142.1, a foreign national is considered to be from a sensitive country, if any of the following is true:

- (1) Citizen of a sensitive country;
 - (2) Place of employment in a sensitive country;
 - (3) Place of birth in a sensitive country unless the person is now a U.S. citizen (or in accordance with other DOE guidance);
 - (4) A stateless person.
- k. Host A DOE or DOE contractor or employee who is sponsoring a visitor or assignee under DOE Notice 142.1. A visitor or assignee is not permitted to be a host.
- l. Visit Presence of an invited foreign national at a DOE facility or at a meeting or other interaction in the U.S. sponsored by a DOE facility for seven calendar days or less, or if in accordance with an international agreement of 21 calendar days or less. Visits are normally for the purpose of technical discussions, orientation tours, observation of projects or equipment, contract service work, or discussion of collaboration on topics of mutual interest without participation in the work of the facility, or for courtesy purposes.
- m. Assignment Presence of an invited foreign national at a DOE facility, or at a meeting or other interaction in the U.S. sponsored by a DOE facility, for more than seven calendar days in the absence of an international agreement, or for the number of days specified in an international agreement. Assignments are limited to two years duration (one year for sensitive cases), subject to extension in accordance with DOE Notice 142.1. Assignments are normally for the purpose of participating in the work of the facility, gaining experience, or contributing to projects. Assignees may include employees, guests, or consultants.
3. Prior Approvals Relating to Foreign Nationals
- a. Foreign visits and assignments pertaining to DOE programs must be in accordance with DOE Notice 142.1 and other DOE policies furnished in writing to the contractor.
 - b. Prior DOE approval shall be obtained for travel to the Sensitive Countries by a contractor employee, while employee's salary is directly charged to contract funds, or by any person whose travel is to be reimbursed from the contract fund.

4. Reports Relating to Foreign Visits and Assignments

- a. Host Report Requirements To enable the approving official to evaluate the effectiveness of visits and assignments, and to assist in determining the desirability of future such visits and assignments, host reports are required for those visits and assignments for which approval authority has not been designated. The host report will be submitted to DOE in accordance with DOE Notice 142.1.
- b. On a request of the Contracting Officer, the Contractor shall furnish a semiannual report to DOE/NV on total foreign national employment.

PART III - LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS
SECTION J - LIST OF ATTACHMENTS

APPENDIX G - PERFORMANCE GUARANTEE AGREEMENT

PERFORMANCE GUARANTEE AGREEMENT (original in contract file)

For value received, and in consideration of, and in order to induce the United States (the Government) to enter into Contract DE-AC08 -00NV 12101 for the management and operation of the Office of Civilian Radioactive Waste Program (the "Contract") dated _____, by and between the Government and Bechtel SAIC Company, LLC (Contractor), the undersigned, Bechtel National, Inc. (also the Guarantor), a corporation incorporated in the State of Nevada with its principal place of business at 45 Fremont Street, San Francisco, CA 94105, hereby unconditionally guarantees to the Government (a) the full and prompt payment and performance of all obligations, accrued and executory, which Contractor presently or hereafter may have to the Government under the Contract, and (b) the full and prompt payment and performance by Contractor of all other obligations and liabilities of Contractor to the Government, fixed or contingent, due or to become due, direct or indirect, now existing or hereafter and howsoever arising or incurred under the Contract, and Guarantor further agrees to indemnify the Government against any losses the Government may sustain and expenses it may incur as a result of the enforcement or attempted enforcement by the Government of any of its rights and remedies under the Contract, in the event of a default by Contractor thereunder, and/or as a result of the enforcement or attempted enforcement by the Government of any of its rights against Guarantor hereunder.

Guarantor has read and consents to the signing of the Contract. Guarantor further agrees that Contractor shall have the full right, without any notice to or consent from Guarantor, to make any and all modifications or amendments to the Contract without affecting, impairing, or discharging, in whole or in part, the liability of Guarantor hereunder.

Guarantor hereby expressly waives all defenses which might constitute a legal or equitable discharge of a surety or guarantor, and agrees that this Performance Guarantee Agreement shall be valid and unconditionally binding upon Guarantor regardless of (i) the reorganization, merger, or consolidation of Contractor into or with another entity, corporate or otherwise, or the liquidation or dissolution of Contractor, or the sale or other disposition of all or substantially all of the capital stock, business or assets of Contractor to any other person or party, or (ii) the institution of any bankruptcy, reorganization, insolvency, debt agreement, or receivership proceedings by or against Contractor, or adjudication of Contractor as a bankrupt, or (iii) the assertion by the Government against Contractor of any of the Government's rights and remedies provided for under the Contract, including any modifications or amendments thereto, or under any other document(s) or instrument(s) executed by Contractor, or existing in the Government's favor in law, equity, or bankruptcy.

Guarantor further agrees that its liability under this Performance Guarantee Agreement shall be continuing, absolute, primary, and direct, and that the Government shall not be required to pursue any right or remedy it may have against Contractor or other Guarantors under the Contract, or any modifications or amendments thereto, or any other document(s) or instrument(s) executed by Contractor, or otherwise. Guarantor affirms that the Government shall not be required to first commence any action or obtain any judgment against Contractor before enforcing this Performance Guarantee Agreement against Guarantor, and that Guarantor will, upon demand, pay the Government any amount, the payment of which is guaranteed hereunder

and the payment of which by Contractor is in default under the Contract or under any other document(s) or instrument(s) executed by Contractor as aforesaid, and that Guarantor will, upon demand, perform all other obligations of Contractor, the performance of which by Contractor is guaranteed hereunder.

Guarantor agrees to assure that it shall cause this Performance Guarantee Agreement to be unconditionally binding upon any successor(s) to its interests regardless of (i) the reorganization, merger, or consolidation of Guarantor into or with another entity, corporate or otherwise, or the liquidation or dissolution of Guarantor, or the sale or other disposition of all or substantially all of the capital stock, business, or assets of Guarantor to any other person or party, or (ii) the institution of any bankruptcy, reorganization, insolvency, debt agreement, or receivership proceedings by or against Guarantor, or adjudication of Guarantor as a bankrupt.

Guarantor further warrants and represents to the Government that the execution and delivery of this Performance Guarantee Agreement is not in contravention of Guarantor's Articles of Organization, Charter, by-laws, and applicable law; that the execution and delivery of this Performance Guarantee Agreement, and the performance thereof, has been duly authorized by the Guarantor's Board of Directors, Trustees, or any other management board which is required to participate in such decisions; and that the execution, delivery, and performance of this Performance Guarantee Agreement will not result in a breach of, or constitute a default under, any loan agreement, indenture, or contract to which Guarantor is a party or by or under which it is bound.

No express or implied provision, warranty, representation or term of this Performance Guarantee Agreement is intended, or is to be construed, to confer upon any third person(s) any rights or remedies whatsoever, except as expressly provided in this Performance Guarantee Agreement.

In witness thereof, Guarantor has caused this Performance Guarantee Agreement to be executed by its duly authorized officer, and its corporate seal to be affixed hereto on

BECHTEL NATIONAL, INC.

T. F. Hash, President

**GUARANTEE AGREEMENT ON
BEHALF OF GUARANTOR**

I, S.P. Ogden, certify that I am the Secretary of the corporation named as Guarantor herein; that T.F. Hash who signed this certificate on behalf of the Guarantor, was then President of said corporation; that said certificate was duly signed for and in behalf of said corporation, and is within the scope of its corporate powers; that I have caused the corporate seal to be affixed hereto.

S.P. Ogden, Secretary

PART III - LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS
SECTION J – LIST OF ATTACHMENTS

APPENDIX H – GUIDANCE FOR PREPARATION OF DIVERSITY PLAN

(See Section I, Contract Clause DEAR 970.5226-1, entitled, "Diversity Plan")

This Guidance is to assist the Contractor in understanding the information being sought by the Department for each of the Diversity elements and where these issues are already addressed in a Contract, the Contractor need only cross reference the location.

Work Force

This Contract includes clauses on Equal Opportunity and Affirmative Action. The Contractor should discuss its policies and plans for implementation of these clauses in its operations. If the Contractor already has procedures in place, these should be discussed and copies provided.

Educational Outreach

The Contractor should outline or discuss any programs already provided, or which it intends to provide, which will provide employees an opportunity to improve their employment skills and opportunities. These programs may already be discussed in the proposal submitted for this Contract or in the Contract itself and could include: educational assistance allowance, provision for outside training programs either during or outside regular work hours, and executive training programs for non-executive employees. The Contractor should also discuss any plans to participate in any program supporting Historically Black Colleges and Universities, Hispanic Institutions and Native American Institutions.

Community Involvement and Outreach

Contractor community relations activities could include support for the following activities: support for science, mathematics and engineering education; support for community service organizations; assistance to Governmental and community service organizations and for equal opportunity activities; and community assistance in connection with work force reduction plans. The Contractor may provide support to these activities through direct sponsorship or making individual employees available to work with the specific community activity. The Contractor's Diversity Plan should discuss the Contractor's existing and planned activities promoting community involvement of its employees as well as the corporation.

Subcontracting

If appropriate to the Contractor, the Contract will contain FAR 52.219-9 "Small Business Subcontracting Plan" and other small business-related clauses. Additionally, the RFP may have contained additional guidance on small business subcontracting. The Contractor should briefly summarize its subcontracting plan. If the Contractor is participating, or plans to participate, in the Department's Mentor-Protégé Program, this involvement or planned involvement, should be summarized. Information concerning its subcontracting plans already submitted and approved does not need to be redeveloped or renegotiated.

Economic Development (Including Technology Transfer)

Many of the Department's contracts include clauses dealing with technology transfer. Planning or activities developed under such clauses may apply to this element of the Contractor's Diversity Plan. Additionally, some of the subcontracting activities planned by the Contractor with small business, small disadvantaged businesses, or woman-owned small businesses may be entered into for the purpose of assisting the economic development of or transferring technology to such a business. The Contractor's Diversity Plan should outline and discuss its planned activities promoting economic diversification of the local community.

PART III -LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS
SECTION J - LIST OF ATTACHMENTS

APPENDIX I - REPORTS & PLANS REQUIREMENTS LIST

Reporting Requirement/Owner	Freq.	Distribution	Date Due
1. Organization Chart - Birdie H-Ray, Dave Marks	A, Y	CO, DOE/NV AMBFS	As Required, January 31
2. Annual Work Plans - Wayne Kozai	Y	OPC, RW-40, RW-50	As Directed
3. WAD Revision Proposals - Birdie H-Ray	A	CO	As Required
4. Monthly Spending Variance Report - Birdie H-Ray	M	CO	30 days after the end of the reporting month
5. RESERVED	-	-	-
6. WBS Index and WBS Element Definition - Wayne Kozai, Allen Roberts	A	CO, DOE/NV RMD	As required
7. S/C small/disadvantaged contract Report (FM294/5) - Birdie H-Ray, Tammie Henderson	S	CO, DOE/NV/CMD	April 25 and October 25
8. Cyber Security Program - R. Wells	A	OIM	As Required, every 2 yrs
9. Statement of Cost Incurred and Claimed - Birdie H-Ray, W. Kozai, R. Busboom	Y	CO, OPC, DOE/NV FSD	November 15
10. Trial Balance Activity - Birdie H-Ray, R. Busboom	M	CO, DOE/NV FSD	4 th working day following close of calendar mo. and YE as established.
11. Checks Paid Letter of Credit Report - Wayne Kozai, R. Busboom	M	OPC, DOE/NV FSD	As Required
12. Indirect Costs Proposal - Birdie H-Ray, R. Busboom	Y	CO, DOE/NV FSD	As Directed
13. Indirect Variance Analysis - Birdie H-Ray, R. Busboom	M	CO, DOE/NV FSD	11 th working day after comp. DOE Month- end Close
14. Internal Audit Plans - Birdie H-Ray, Wayne Kozai, R. Busboom	Y	CO, OPC	11 th working day after comp. DOE Month- end Close
15. Internal System Audit Reports - Birdie H-Ray, W. Kozai, R. Busboom	A	CO, OPC, DOE/NV FSD	July 15 or as determined by the OIG
16. Compliance Audit Tracking System Report - Birdie H-Ray, Kozai, R. Busboom	Q	CO, OPC, DOE/NV FSD	In accordance with DOE-approved schedule
17. Annual Submittal of Property Management Information - Birdie H-Ray, Sharon Carter	Y	CO, PA	As directed - close of the fiscal year
18. Negotiated Sales Report - Sharon Carter	Y	PA	30 days after close of the fiscal year
19. Excess Personal Property furnished to Non-Federal Recipients - Sharon Carter	Y	PA	30 days after close of the fiscal year
20. Enter Data in the DOE Property Information Database System (PIDS) Sharon Carter	Y	PA	30 days after close of the fiscal year
21. Deferred Maintenance Report for Personal Property - Sharon Carter, S. Mellington, R. Busboom	Y	PA, OPE, DOE/NV FSD	20 days after close of the fiscal year
22. Summary Individual Contractor Personal Property Sales - Sharon Carter, R. Busboom	Q	PA, DOE/NV FSD	30 days after reporting quarter
23. Actuarial Valuation for the BSC defined benefit plan - Birdie H-Ray, C. Abernathy	Y	CO, DOE/NV HRD	9 mos. after beg. of plan year

Reporting Requirement/Owner	Freq.	Distribution	Date Due
24. IRS Form 5500 - Birdie H-Ray, C. Abernathy	Y	CO, DOE/NV HRD	As Required (30 days after submission to IRS)
25. Report of Compensation - Birdie H-Ray, C. Abernathy	S	CO, DOE/NV HRD	Apr 15 & Oct 15
26. Contractor Salary/Wage Increase Expenditure Report - Birdie H-Ray, C. Abernathy	Y	CO, DOE/NV HRD	45 days after plan approved
27. Report of Employment - Birdie H-Ray, C. Abernathy	Q	CO, DOE/NV HRD	As of 1/10; 4/10; 7/10; 10/10
28. Affirmative Action Plan - Birdie H-Ray, C. Abernathy	Y	CO, DOE/NV HRD	June 12
29. Report of Contractor Exp for Supplemental Compensation - Birdie H-Ray, C. Abernathy	Y	CO, DOE/NV HRD	March 15
30. Training/Educational Reimbursement Log - H-Ray, De La Garza	A, S	CO, RW-56	As required, April 15 and October 15
31. Socioeconomic Monitoring Program Quarterly Employment Data Report - Scott Wade	Q	OPE	As required
32. Contract Funds Status Report - Birdie H-Ray, Wayne Kozai, Allen Roberts	M	CO, RW-53, OPC, DOE/NV RMD	As required
33. PACS Upload - Wayne Kozai	M	RW-50/40, OPC	As required
34. GM Assurance Memo for FMFIA - Susan Showard, R. Busboom	Y	RW-54, DOE/NV FSD	October 1 (concurrently to OCR WM and DOE/NV HCA)
35. Contract Employment Distribution by Programs - Birdie H-Ray, C. Abernathy	Q	CO, DOE/NV HRD	As of 1/10; 4/10; 7/10; 10/10
36. Manpower Reporting - C. Abernathy	M	HRD	15th calendar day following reporting month
37. M&O Overtime and EWV Report - Birdie Hamilton-Ray	A	CO	As required
38. Contractor Fulltime Equivalent Report - Birdie Hamilton-Ray	M	RW-53/OPC	20 th calendar day following reporting month
39. Open Commitment Report - Wayne Kozai, Syed Bokhari	M	CO, DOE/NV RMD	As required
40. Contractor Travel Report - Birdie Hamilton-Ray, Jeff Berger	Q	CO, DOE/NV RMD	30 calendar days after reporting quarter
41. Functional Support Cost Report - Wayne Kozai, R. Busboom	Y	OPC, DOE/NV FSD	November 15
42. Balance Scorecard Report - Birdie Hamilton-Ray	Y	CO	30 days after close of the fiscal year
43. Balance Scorecard Plan - Birdie Hamilton-Ray	Y	CO	September 30
44. Budget Calls (primary, supplemental, x-cu) - Allen Roberts	A, Y	CO, DOE/NV RMD	As required
45. Funds Certification for withdrawal - Allen Roberts	A	CO, DOE/NV RMD	As required
46. List of Funds Certifying Officers - Allen Roberts	A	CO, DOE/NV RMD	As required
47. Payment-Equal-To-Taxes (PETT) Information Packages - Allen Benson	Y	1A	As required

LEGEND: A=As Req'd; BW=Bi-Weekly; M-Monthly; Q-Quarterly; S-Semi-annually; Y=Yearly

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